

B 2
STORAGE



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114687965>

PENSION BULLETIN

CAZON
TR 600
- B74

TABLE OF CONTENTS

General Announcements

Pension Division Staff Changes	1
Pension Advisory Committees —	
Membership as of November 2003	2

Court/Prosecution Matters

Court Matters	3
Prosecution Matters	5

Legislative Changes/ Regulatory Policies

Deadline for Early Filing of Actuarial Funding Valuation Reports — D050-802	7
2004 LIF Maximum Payment Amount Table — L200-400	8
Restrictions on Payments in Deficit Situations — W100-440	10

Superintendent of Financial Services

Administrator Appointments — Section 71 of the <i>Pension Benefits Act</i>	13
Notices of Proposal to Make an Order	14
Notices of Proposal to Refuse to Consent to Applications for Payment of Surplus out of Wound Up Pension Plans	65

JANUARY 2004 • VOLUME 13, ISSUE 1

Notices of Proposal to Make a Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans	75
Orders that Pension Plans be Wound Up	86
Order that the Board of Trustees Pay out of a Pension Fund the Cost of an Examination, Investigation or Inquiry	91
Consents to Payments of Surplus out of Wound Up Pension Plans	97
Refusals to Consent to Applications for the Payment of Surplus out of Wound Up Pension Plans	104
Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the <i>Pensions Benefits Act</i>	111
Allocation of Money from the Pension Benefits Guarantee Fund	113

Financial Services Tribunal Activities

Appointments of Financial Services Tribunal Board Members	115
Pension Hearings Before the Financial Services Tribunal	116
Financial Services Tribunal Decisions with Reasons	127





All publications provided by the Financial Services Commission of Ontario (FSCO) in written or electronic formats have been prepared by FSCO to provide general information about pension matters to the public.

Information in this Bulletin or any FSCO publication is provided by FSCO upon the express understanding that neither FSCO nor any member of the staff of FSCO is providing legal, actuarial, accounting or other professional advice or services whatsoever with respect to the material contained in this Bulletin or any FSCO publication. FSCO and staff of FSCO are not responsible for any action, costs, damages or liability arising from the use of any information contained in FSCO publications nor in respect of the consequences of anything done or omitted to be done by any person in reliance upon the whole or any part of the contents of this Bulletin or any FSCO product.

The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

This material is owned by the Government of Ontario and protected by copyright law. It may not be reproduced or redistributed for commercial purposes without the prior written permission of the Queen's Printer for Ontario.

If it is reproduced or redistributed for non-commercial purposes, Crown copyright is to be acknowledged.

PERMISSION

To request permission to reproduce all or part of this material for commercial purposes, please contact the Queen's Printer's representative:

Senior Copyright Analyst

Publications Ontario

(416) 326-5153

E-mail: copyright@gov.on.ca

© Queen's Printer for Ontario, 2004

ISBN 1481-6148

Ce document est disponible en français



GENERAL ANNOUNCEMENTS

Pension Division Staff Changes

Marilyn Johnson has accepted the assignment of Pension Officer in the Pension Plans Branch.

Effective November 3, 2003, Roger Smithies completed his secondment to the Ministry of Finance and resumed his position of Senior Manager, Pension Policy. Jerry Williams has returned to his position of Senior Policy Consultant in the Pension Policy Unit.





FSCO Pension Advisory Committees — Membership as of November 2003

Accounting and Assurance Advisory Committee

Besler, Jason
French, Mike
Racanelli, Nick
Wade, Jack

Eigl, Charlie (C)
Preis, Katherine
Turner, Eric
Walker, Albert (VC)

Actuarial Advisory Committee

Benjamin, Gavin
DiRisio, Wendy
Hutchinson, Laurie (VC)
Newman, Laura
Pitcher, Clare
Young, Wilson

Cohen, Lorne (C)
Hart, David
Levy, Thomas
Peng, Peter
Robertson, Marcus

Investment Advisory Committee

Andrews, Doug
Franks, Jim
Kyle, Claire
Mills, Daniel
Pond, Robin (VC)
Wirth, Alf

Butera, Michael
Grantier, Bruce (C)
Mercier, Eileen
Pennal, Peter
Schaefer, Klaus

Legal Advisory Committee

Forgie, Jeremy
Healy, Priscilla
Nachshen, Gary (C)
Padfield, Michael
Rowe, Kevin
Winfield, Gregory

Gold, Murray (VC)
Lokan, Andrew
O'Reilly, Hugh
Rienzo, Doug
Whiston, Bethune

(C) denotes Chair

(VC) denotes Vice-Chair



COURT/ PROSECUTION MATTERS

The information set out below is current to December 3, 2003.

Court Matters

I. Monsanto

On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management to appeal the Court of Appeal's decision. The Court of Appeal held that subsection 70(6) of the PBA requires a distribution of surplus assets on partial wind up. A tentative date for hearing the appeal has been set for February 16, 2004.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the PBA. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded \$40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal

the decision on quantum. The appeals were heard by the Court of Appeal on November 10, 2003 and the decision was reserved.

III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan who were unhappy with the fact that the Salaried Plan's surplus would be merged into the Hourly Plan's fund, which had a deficit. The letter giving the consent stated that anyone dissatisfied with the consent could request a Financial Services Tribunal hearing.

The hearing was held by the Financial Services Tribunal on January 15 to 17, 2002. On May 31, 2002, the Financial Services Tribunal released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the Financial Services Tribunal has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

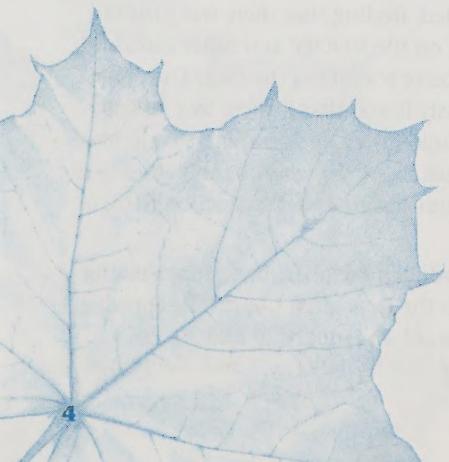
The Salaried Plan members have appealed this decision to the Divisional Court. The appeal is set to be heard on January 29 and 30, 2004.

COURT OF APPEAL FOR ONTARIO

IV. Marshall-Barwick Limited

The issue in this hearing is whether a Notice of Proposal ("NOP") proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The hearing was held September 9, 2002. The panel of the Financial Services Tribunal released its decision on November 29, 2002 upholding the Superintendent's NOP and directing the Administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed this decision to the Divisional Court. No date has been set yet for hearing the appeal.



Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the pension plan. The first appearance was on June 13, 2002. The trial was adjourned to November 10, 2003 and new trial dates were set for May 11 and 18, 2004.

II. Club 300 Bowl Inc.

Charges were laid against the corporation and its two directors for non-remittance of employer and employee contributions, failure to file Annual Information Returns and failure to file Financial Statements. The first appearance was on July 24, 2002. On July 30, 2003, the corporation and one of the directors pleaded guilty to 8 counts related to the failure to pay pension contributions and the failure to file financial statements. The defendants were fined \$7,900.

III. Microcolour Dispersions Ltd.

Charges were laid against the corporation and its director for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre-trial conference was on January 13, 2003. The trial was originally set for September 19 and 22, 2003 but was adjourned to May 10 and 11, 2004.

IV. Christopher Bain

Charges were laid against the employer and a corporate officer of the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario, at which time the non-

remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. The next appearance is on December 11, 2003.

V. Rosko Forestry Operations Ltd.

Mr. Bain was a director and officer of a company (Microcolour Dispersions Ltd.) that failed to remit to the employee pension plan both employer and employee pension contributions. Bain was convicted in his personal capacity for permitting the company to contravene the PBA. He was placed on probation and required to make restitution to the plan. He failed to comply with the probation order and was charged with breach of probation. He pleaded guilty to breach of probation and sentencing is scheduled to take place on December 12, 2003.

VI. International Paper Canada Inc.

Charges laid for failing to file Financial Statements for 1998, 1999 and 2000, for failing to file Annual Information Returns for 1999, 2000 and 2001 and for failing to pay the Annual Information Return filing fees for 1999, 2000 and 2001. The first appearance was on March 18, 2003 at Old City Hall. On October 2, 2003, the defendant pleaded guilty to all charges and fines in the amount of \$14,000 were imposed.

VII. International Paper Company Canada Inc.

Charges were laid against the employer for failing to file financial statements in respect of two pension plans. The first appearance was on July 22, 2003. The matter was adjourned to October 15, when the employer pleaded guilty to all charges and fines in the amount of \$16,000 were imposed.



VIII. Slant/Fin Ltd./Ltee.

Charges were laid against the employer for failing to file four financial statements in respect of the Employee Retirement Plan of • Slant/Fin Limited. The first appearance is January 15, 2004.

LEGISLATIVE CHANGES/ REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Deadlines
INDEX NO.:	D050-802
TITLE:	Deadline for Early Filing of Actuarial Funding Valuation Reports — Regulation 909 s. 14
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (July 2003)
EFFECTIVE DATE:	July 15, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Section 14 of the Regulation gives the Plan Administrator the ability to choose the valuation date for a report filed under that section, provided the valuation date is no later than 3 years after the valuation date for the report last filed under that section. However, for any plan for which the report last filed indicated solvency concerns, a new report is required to be filed with a valuation date no later than 1 year from the valuation date of the report last filed.

If the Administrator chooses to file a new report with a valuation date that is prior to the 3rd anniversary or the 1st anniversary, as the case may be, of the effective date of the report last filed under section 14 (an "intra-valuation report"), the administrator must file the intra-valuation report within 9 months of the selected valuation date. Administrators should be aware that if the intra-valuation report is filed more than 9 months after the selected

valuation date, FSCO reserves the right to reject such a report.

Until an intra-valuation report is actually filed, the Administrator retains the option to choose a valuation date for the report that is no later than 3 years or 1 year, as the case may be, after the valuation date of the last filed section 14 valuation report. This is so whether or not the Administrator has indicated an intention to file the intra-valuation report. Therefore it is not necessary for Administrators to seek, nor does FSCO grant, extensions of time for filing intra-valuation reports.



Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Locked-In Accounts
INDEX NO.:	L200-400
TITLE:	2004 LIF Maximum Payment Amount Table
APPROVED BY:	Deputy Superintendent, Pensions
PUBLISHED:	FSCO website (December 2003)
EFFECTIVE DATE:	January 1, 2004

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Note: LIF maximum payment amount tables for 2003 and prior years are found under the archived L050-series of FSCO pension policies.

The table on the following page has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of policies published by FSCO about the Ontario LIF are available on FSCO's website at www.fsco.gov.on.ca, or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on the following page:

- (1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2003 (5.24%) and 6.00% for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum

payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2004 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2004	New Age During 2004	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2004*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

*The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2004 using the interest assumptions on the previous page.



Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Wind Up
INDEX NO.:	W100-440
TITLE:	Restrictions on Payments in Deficit Situations — Regulation 909 ss. 29(7) and (8)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (November 2003)
EFFECTIVE DATE:	December 1, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

A question has arisen as to whether an administrator may transfer the commuted value or purchase a life annuity for members, former members, and other beneficiaries when a plan is being wound up in whole or in part with a deficit that requires additional funding under section 75 of the PBA.

The answer depends on whether all the pensions and other benefits being funded under section 75 would be guaranteed by the Pension Benefits Guarantee Fund (PBGF) under section 84 of the PBA.

Where a plan is winding up in whole or in part, subsections 70(2) and (3) of the PBA impose restrictions on payments that can be made out of the pension fund as follows:

(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.

(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Subsections 29(7) and (8) of the Regulation contain provisions that deal with the timing of certain payments that may be made when plans are being wound up:

(7) Subject to the requirements of subsection (8), the administrator of a pension plan,

(a) that is terminated;

(b) that provides defined benefits; and

(c) with respect to which no order has been made under subsection 83(1) of the Act,

may, after the wind up report required under subsection (1) has been approved by the Superintendent, pay prior to the completion of any additional funding required under section 75 of the Act,

(d) the accumulated value of any additional voluntary contributions;

(e) the accumulated value of required contributions made by a member or former member; and

(f) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of the wind up with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with clause (e).

(8) Where an employer is required to make payments into a pension plan under section 75 of the Act and all pensions and other benefits being funded under section 75 of the Act would not be guaranteed under section 84 of the Act,

- (a) no funds of the pension plan shall be used to purchase a life annuity for any person entitled thereto; and
- (b) where an election is made under clause 42(1)(a) or (b) of the Act, the maximum portion of the commuted value of the deferred pension that may be transferred is the amount, if any, of the contributions the employee was required to make under the plan plus any additional voluntary contributions made by the employee,

until a report is filed under section 32 certifying that there is no further amount to be funded or an order is made under subsection 83(1) of the Act with respect to the plan.

FSCO's position is that the combined effect of subsections 29(7) and (8) is:

- If all of the pensions and other benefits being funded under section 75 of the PBA would be guaranteed by the PBGF, the provisions in subsection 29(8) do not apply, and the administrator can make the payments described in subsection 29(7).

- If any of the pensions and other benefits being funded under section 75 of the PBA would not be guaranteed by the PBGF, the provisions in subsection 29(8) apply to restrict the payments that can be made out of the pension fund.

Note that subsection 29(9) of the Regulation contains provisions that address reductions to pensions and benefits when a plan is wound up in whole or in part with a deficit.



SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments — Section 71 of the *Pension Benefits Act*

1. PricewaterhouseCoopers as the Administrator of the Pension Plan For Employees of Port Colborne Iron Works Ltd. (Registration Number 0289439), effective immediately.
DATED at Toronto, Ontario, this 9th day of October, 2003.
2. Morneau Sobeco as the Administrator of the Pension Plan For The Hourly Employees of Canadian Tack & Nail Limited (Registration Number 0241968), effective immediately.
DATED at Toronto, Ontario, this 23rd day of July, 2003.
3. Sun Life as the Administrator of the Pension Plan for Salaried Employees of Cold Metal Products Limited (Registration Number 0969188), effective immediately.
DATED at Toronto, Ontario, this 23rd day of July, 2003.
4. London Life as the Administrator of the Aimtronics Corporation Employees Pension Plan (Registration Number 0415943), effective immediately.
DATED at Toronto, Ontario, this 4th day of July, 2003.



Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Commercial Aluminum (1993)**

Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan");

TO: **Thompson Actuarial Limited**
87 Wolverleigh Blvd.
Toronto ON M4J 1R8

Attention: Andre Choquet, FCIA, FSA
Actuary
Administrator of the Pension Plan

AND TO: **Commercial Aluminum Limited**
240 Barton Road
Weston ON M9M 2W6

Attention: Suzanne Lam-Fitzgibbon
Employer

AND TO: **SF Partners Inc.**
(formerly Solursh Feldman Goldberg Inc.)
The Madison Centre
4950 Yonge Street, Suite 400
Toronto ON M2N 6K1

Attention: Brahm Rosen,
Senior Vice President
Trustee in Bankruptcy for Commercial Aluminum (1993) Limited

AND TO: **United Steelworkers of America**

115 Albert Street
P.O. Box 946
Oshawa ON L1H 7N1

Attention: Wess Dowsett
Staff Representative

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration No. 1010289, be wound up in full effective December 31, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer fails to make contributions to the pension fund as required by this Act or the regulation.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued.

6. All or part of the employer's business or all or part of the assets of the employer's are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for members of the employer's pension plan who becomes employee of the person.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650**;

TO: **Kanematsu (Canada) Inc.**
c/o Brans, Lehun, Baldwin LLP
2401-120 Adelaide Street West
Toronto, Ontario
MSH 1T1

Attention: Mr. Thomas C.H. Baldwin
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650 (the "Plan"), to Kanematsu (Canada) Inc. in the amount of \$109,554 as at December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind up of the Pension Plan for Employees of Kanematsu (Canada) Inc.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Kanematsu (Canada) Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 1, 1999.
3. As at December 1, 1999, the surplus in the Plan was estimated at \$219,108.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 89% of the active members and 89% of other members (as defined in the application) and all of the former members and other persons entitled to payments from the fund, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and section 8 (1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 4th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Wade Schaefer, Mercer Human Resource
Consulting

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290**;

TO: **The Public Accountants Council for the Province of Ontario**
 Suite 901
 1200 Bay Street
 Toronto, Ontario
 M5R 2A5

Attention: Mr. Peter LaFlair,
 Registrar
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290 (the "Plan"), to The Public Accountants Council for the Province of Ontario in the amount of \$669,897 as of July 1, 2000, subject to adjustment for investment earnings or losses and expenses, to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such

payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Public Accountants Council for the Province of Ontario is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective July 1, 2000.
3. As at July 1, 2000, the surplus in the wind-up portion of the Plan was estimated at \$946,530.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the affected active members and other members (as defined in the application) and 100% of the affected former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed: 25% to the affected beneficiaries of the Plan plus \$10,000 per individual as defined in the Surplus Distribution Agreement. The remainder of the surplus will be refunded to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the refund of \$669,897 as at July 1, 2000, which is estimated to be the remainder of the surplus in the Plan once the beneficiaries of the Plan affected by the partial wind up receive their entitlement as defined in the Surplus Distribution Agreement. Such amount to be adjusted for interest and expenses to the date of payment.

7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 10th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Peter LaFlair, The Public Accountants
Council for the Province of Ontario

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Designated Employees of Complete Packaging Limited, Registration No. 0698571**;

TO: **Complete Packaging Limited**
P.O. Box 24010
2470 Wyandotte Street East
Windsor ON N8Y 4Y9

Attention: Pat Dumas
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration No. 0698571 (the "Plan"), to Complete Packaging Limited in the amount of \$118,503 as at March 31, 2001, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Complete Packaging is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective March 31, 2001.
3. As at March 31, 2001, the surplus in the Plan was estimated at \$118,503.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.

5. The application discloses that by written agreement made by the Employer and 100% of the former members, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed in full to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.



DATED at Toronto, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Donna Wolfe, Cowan Wright Beauchamp
Limited

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441 (the "Plan")**;

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561

Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 20, 2002.

REASONS:

- Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
- The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
- All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
- Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar



FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

NOTI -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433** (the "Plan");

TO: **The Standard Life Assurance Company**
 1245 Sherbrooke Street West
 Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
 Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**
 250 Lottridge Street
 Hamilton ON L8L 8J8

Attention: Mr. Neil Clark
 Chief Operations Officer
Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
 c/o Kroll Restructuring Ltd.
 One Financial Place
 One Adelaide Street East,
 30th floor
 Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
 5160 Yonge Street
 14th Floor
 Toronto, Ontario
 M2N 6L9

Attention: The Registrar

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Ward Press Limited Pension Plan, Registration Number 0583187 (the "Pension Plan")**;

TO: **Sun Life Assurance Company of Canada**
225 King Street West
Toronto ON M4V 3C5

Attention: Paul Browett,
Pension Account Representative
Administrator of the Pension Plan

AND TO: **Ward Press Limited**
82 Carnforth Road
North York ON M4A 2K7

Attention: Donald Ward,
President
Employer

AND TO: **BDO Dunwoody Limited**
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mark G. Chow,
Vice-President
Receiver and Manager of Ward Press Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Ward Press Limited, Registration No. 0583187, be wound up in full effective June 30, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 30th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the
Superintendent of Financial Services to Make an
Order under section 69 of the Act, relating to
**the Pension Plan for The Employees of
RNG Equipment Inc., Registration
Number 491126 (the "Plan");**

TO: **The Standard Life Assurance
Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Domenic Muro,
Compliance Support Specialist
Appointed Administrator

AND TO: **RNG Equipment Inc.**
Bay Wellington Tower, BCE Place
181 Bay St. Box 825, Suite 2040
Toronto ON M5J 2T3

Attention: Ms. Caryn McNeil,
Administrator

Employer

AND TO: **Blake, Cassels & Graydon LLP**
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Ms. Kathryn M. Bush

**Counsel for the Trustee
in Bankruptcy of
RNG Group Inc. (formerly
RNG Equipment Inc.)**

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect
of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective
November 30, 2001.

REASONS:

1. There was a cessation of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 9th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan for Employees of Constitution Insurance Company of Canada, Registration No. 356204;**

TO: **Constitution Insurance Company of Canada**
500 University Ave.
Toronto, Ontario
M4G 1V7

Attention: Mr. F. Di Tomasso,
President and CEO
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan for Employees of Constitution Insurance Company of Canada, Registration No. 356204 (the "Plan"), to Constitution Insurance Company of Canada in the amount of \$1,663,801.45 as at December 31, 2000, adjusted to reflect investment income and expenses to date of distribution.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing of the distribution of surplus assets pursuant to section 79(3)(c) of the Act, to members, former members and other persons entitled to such payments in accordance with the Surplus Sharing Agreement made on November 15, 2000, in the amount of \$713,057.77 as

at December 31, 2000, adjusted to reflect investment income and expenses to date of distribution.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Constitution Insurance Company of Canada is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1993.
3. As at December 31, 2000, the surplus in the Plan was \$2,376,859.22.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 67.95% of members and 94.74% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 70% to the Employer; and
 - b) 30% to the beneficiaries of the Plan as defined in the Surplus Sharing Agreement made on November 15, 2000.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 70% of the surplus in the Plan adjusted to reflect investment income and the payment of expenses shall be refunded.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 12th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Ms. Lily I. Hammer, Paliare Roland Barristers

¹NOTE -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of
the Superintendent of Financial Services to
Make an Order under section 69 of the
Act, relating to the **Retirement Plan for**
Salaried Employees of MIL Systems
Engineering, Registration Number
684902 (the "Plan");

TO: **PricewaterhouseCoopers Inc.**

Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Sharon A. Carew,
Senior Manager

Appointed Administrator

AND TO: **MIL Systems Engineering**

1150 Morrison Drive — Suite 200
Ottawa ON K2H 8S9

Attention: Mr. Garry M. Skinner,
VP Finance & Administration

Employer

AND TO: **Groupe Thibault Van Houtte**
& Associes Ltee

70 Rue Dalhousie, Bureau 100
Quebec City, Quebec G1K 4B2

Attention: Mr. Patrice Van Houtte

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect
of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective
November 2, 2001.

REASONS:

1. The employer is bankrupt within the
meaning of the *Bankruptcy & Insolvency Act*,
pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have
ceased to be employed by the employer as
the result of the discontinuance or reorgani-
zation of all or part of the business of the
employer pursuant to clause 69(1)(d) of
the Act.
3. Such further reasons as may come to my
attention.

YOU ARE ENTITLED TO A HEARING by
the Financial Services Tribunal (the "Tribunal")
pursuant to s. 89(6) of the Act. To request a
hearing, you must deliver to the Tribunal a writ-
ten notice that you require a hearing, within
thirty (30) days after this Notice of Proposal is
served on you.¹

YOUR WRITTEN NOTICE must be delivered
to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if deliv-
ered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered
on the seventh day after the date of mailing.



FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 17th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522** (the "Plan");

TO: **PricewaterhouseCoopers Inc.**
 Royal Trust Tower, Suite 3000
 PO Box 82,
 Toronto Dominion Centre
 Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes,
 Manager
Appointed Administrator

AND TO: **Sealcraft Inc.**
 6525 Northam Dr.
 Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
 Personnel Manager

Employer
AND TO: **Schwartz Levitsky Feldman Inc.**
 1167 Caledonia Road
 Toronto ON M6A 2X1

Attention: Mr. Richard Kline
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective October 16, 2002.

REASONS:

1. Failure of the employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all or part of business of the employer pursuant to clause 69(1)(d) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
 5160 Yonge Street
 14th Floor
 Toronto, Ontario
 M2N 6L9

Attention: The Registrar

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 17th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to Make an Order pursuant to section 19(1) of the Act, in respect of the **Boilermakers' National Pension Plan (Canada) Registration No. 0366708**; **AND IN THE MATTER OF** a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register several amendments to the **Boilermakers' National Pension Plan (Canada), Registration No. 0366708**, under section 18(1)(d) of the Act; **AND IN THE MATTER OF** a Notice of Proposal issued by the Superintendent of Financial Services to revoke the registration of an amendment to the **Boilermakers' National Pension Plan (Canada)** as Amended, Restated and Consolidated to January 1988 under section 18(1)(e) of the Act.

TO: **Trustees of the Boilermakers' National Pension Plan (Canada)**
 c/o J.J. McAttee & Associates
 45 McIntosh Drive
 Markham ON L3R 8C7

Attention: Ms. Susan Bird
Administrator

NOTICE OF PROPOSALS

I PROPOSE TO:

1. Make an Order under Section 19(1) of the Act that the Trustees of the Boilermakers' National Pension Plan (Canada), Registration No. 0366708 (the "Plan"), refrain from requiring Plan members to sign a certification and/or imposing any other administrative requirements not set out in the Plan,

including but not limited to, the requirement that Plan members confirm that they will refrain from any union or non-union employment or non International Boilermaker Union employment in the Boilermaker Industry that is governed by the jurisdiction claimed in the Jurisdiction Section of the Constitution of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as well as the Bylaws of the lodge, or any subordinate Lodge, which affect this employment.

2. Make an Order under Section 19(1) of the Act that the Trustees of the Plan ensure that the Plan as Amended and Restated as at January 1, 1997 (the "1997 Plan") is administered in accordance with the Act by not applying section 6.01 of the Plan to retiring Plan members.
3. Revoke the registration of section 4.01 of the Plan as Amended, Restated and Consolidated to January 1988 (the "1988 Plan") pursuant to section 18(1)(e) of the Act.
4. Refuse to register amendments to section 6.01 of the 1997 Plan, contained in Amendment No. 8 dated April 12, 2000 and Amendment No. 13 dated April 16, 2002, pursuant to section 18(1)(d) of the Act.
5. Refuse to register amendments to the first paragraph of section 8.02 of the Plan, contained in Amendment No. 9 dated March 21, 2001, Amendment No. 13 dated April 16, 2002 and Amendment No. 14 dated October 2, 2002 pursuant to section 18(1)(d) of the Act.
6. Refuse to register amendments to section 10.1 (ii) of the Plan, contained in Amendment No. 8 dated November 30, 2000.

REASONS FOR THE PROPOSALS TO REFUSE:

Section 6.01 of the Plan

1. The Plan is a multi-employer pension plan established July 1, 1971 (the "1971 Plan") for the benefit of members of the Boilermaker Union. It is administered by a Board of Trustees pursuant to the terms of the Plan. The Plan has members in several jurisdictions. Ontario is the major authority.
2. The 1971 Plan defined retirement as the cessation of "active participation in any occupation for wage or profit." Amendment No. 1 to the 1971 Plan adopted March 1, 1973 and effective July 1, 1971, defined retirement for the purposes of the 1971 Plan as the cessation of "active participation as a Boilermaker for wage or profit."
3. This provision was subsequently amended by Amendment No. 18 adopted August 16, 1988 and effective January 1, 1986 which extended the definition of retirement to include a cessation of employment with a participating employer "in any capacity."
4. The 1971 Plan was replaced by the Plan as Amended, Restated and Consolidated to January 1988 (the "1988 Plan"), which deleted the definition of retirement altogether and introduced the following provision at section 4.01:

For the purposes of this Plan, a Participant will not be deemed to be retired unless he has withdrawn and refrained from employment anywhere within the construction or construction related industry or trade in the jurisdiction of any Boilermaker Local in Canada or in the United States, either as an employee or on a self-employed basis, and he is not employed by an Employer in any

capacity. The retirement date of a Participant shall be determined in accordance with this Section.

5. Under section 4.01 of the 1988 Plan a member was not deemed to have retired unless he had withdrawn from the construction or construction related industry. It made no distinction between members who retired at or before the normal retirement age.
6. The 1988 Plan was replaced by the 1997 Plan and section 4.01 of the 1988 Plan was substantially retained as section 6.01 of the 1997 Plan.
7. The 1997 Plan was amended by Amendment No. 6 dated April 12, 2000 with an effective date of January 1, 2000. Amendment No. 6 replaced several sections of the 1997 Plan, however, section 6.01 was retained as is.
8. Section 6.01 of the 1997 Plan was amended by Amendment No. 13 adopted April 16, 2002, with an effective date of January 1, 2000. Whereas section 6.01 applied to retirement both at and before the normal retirement age, Amendment No. 13 purports to limit the application of section 6.01 to Plan members who retire on an Enhanced Early Retirement Date and on an Unreduced Early Retirement Date pursuant to sections 6.04 and 6.05 of the Plan.
9. Under section 40(2) of the Act an ancillary benefit for which a member has met all the eligibility requirements under the terms of the pension plan necessary to exercise the right to receive payment of a benefit shall be included in calculating the member's pension benefit.
10. Once a Plan member satisfies all the eligibility requirements set out in the Plan he is entitled to exercise the right to retire on an enhanced early retirement date or on an



unreduced early retirement pension. Section 4.01 of the 1988 Plan, in so far as it provided that a member was not deemed to be retired unless he had withdrawn from the construction or construction related industry, contravened the Act because it imposed a further condition after a member had satisfied the necessary requirement for the payment of his pension benefit.

11. The proposed amendment of section 6.01 of the Plan as set out in Amendment No. 13 restricts its application to Plan members who elect to retire under sections 6.04 and 6.05 of the Plan. It keeps in place the requirement that Plan members are not deemed to be retired unless they have withdrawn from the construction or construction related industry, after the Plan member has satisfied conditions set out in the Plan for the receipt of the early retirement benefit. Therefore, Amendment No. 13 does not establish an eligibility requirement for the receipt of an ancillary benefit under section 40(2). It is an additional restriction that is imposed after a member would have met the eligibility requirements under sections 6.04 and 6.05. It is therefore, in breach of section 40(2) of the Act.

Certification Requirement

12. Members of the Plan who are retiring prior to the normal retirement age are required to sign a document referred to as "Plan Member's Certification" certifying that they will refrain from any union or non union employment or non International Boilermaker Union employment in the Boilermaker Industry that is governed by the jurisdiction claimed in the Jurisdiction Section of the Constitution of the International Brotherhood of

Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as well as the Bylaws of their lodge, or any subordinate Lodge, which affect their employment. The members are required to sign the certification prior to receipt of the pension payments, which is not a requirement set out in the Plan.

13. Trustees of the Plan, by letter dated June 27, 2003, stated that Plan members are not, and have never been, prohibited from retiring if they fail to execute the certification and no Plan members have had pensions deferred, terminated or suspended or otherwise amended due to a failure to complete the certification. The Trustees also stated that the Plan requires members to confirm that they are retiring and the date upon which they expect to leave the trade. However, this requirement is not provided for in the Plan.
14. Section 19(3)(a) of the Act requires that the administrator ensure that the Pension Plan is administered in accordance with the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or certificate of registration. Since the certification requirement and/or administrative requirement that a member confirm that he is retiring from the trade and the industry, are not included in the filed documents in respect of the Plan, such requirements cannot be enforced and are in contravention of the Act.

First paragraph of Section 8.02 of the Plan

15. Section 8.02 of the 1997 Plan provided that the pension benefits of a retired member would not be suspended if he is re-employed



with an employer who participated in the Plan. It made no distinction between members who retired at the normal retirement age and those members who retired prior to the normal retirement age.

16. Amendment No. 9 purports in part, to amend the first paragraph of section 8.02 of the Plan to provide for a reduction in pension benefits of members who retire on an Enhanced Early Retirement Date or on an Unreduced Early Retirement Date pursuant to sections 6.04 and 6.05 of the Plan and who are re-employed by an employer not participating in the Plan.
17. Amendments Nos. 13 and 14 propose to amend the first paragraph of section 8.02 of the Plan to provide that the reduction in pension benefits of members who retire pursuant to section 6.04 and 6.05 of the Plan be made "subject to the requirements and restrictions of the *Pension Benefits Act*, compliance to the extent required by the Canada Customs and Revenue Agency with conditions prescribed for registration of the Plan under the *Income Tax Act* and the receipt of any necessary approvals."
18. Under section 40(2) of the Act, a member who has met all the eligibility requirements for the receipt of an ancillary benefit is entitled to have that benefit included in calculating his pension benefit. In this case, a Plan member who elects to exercise their option to retire under section 6.04 and 6.05 of the Plan is entitled to have the ancillary benefits provided under these provisions used in calculating their pension benefits. The proposed amendments, Amendment Nos. 8, 13 and 14 purport to add a restriction to the continued receipt of the benefits contemplated by sections 6.04 and 6.05 of

the Plan after members have met the eligibility requirements in the Plan and are in receipt of their pension benefits, in contravention of section 40(2) of the Act.

Section 10.01(ii) of the Plan

19. Amendment No. 9 purports to amend section 10.01(ii) of the Plan to allow a Plan member to terminate membership in the Plan if no Contributions were received on his behalf from a participating employer for a period of 6 months. This option is made subject to the condition that the member withdraw and refrain from employment anywhere within the construction or construction related industry or trade in the jurisdiction of any Boilermaker Local of Canada or the United States, either as an employee or on a self-employed basis.
20. Section 38(1)(a) of the Act provides that if contributions are not paid or required to be paid by or on behalf of a member of a multi-employer pension plan for 24 consecutive months or less if specified in the Pension Plan, the member is entitled to terminate his or her membership in the Pension Plan. Under section 38(2) of the Act, a member who exercises the right to membership termination is deemed to also have terminated his or her employment.
21. Under section 38(1) of the Act a pension plan is given the option to allow a member to terminate his or her plan membership if contributions are not paid for a shorter period of time than 24 months. It does not provide for any other conditions to be added to the members' right to terminate membership in a pension plan. Amendment No. 8 purports to add a further condition to the members right to terminate membership in the Plan in contravention of section 38(1) of



the Act. In addition to the requirement that no contributions be received on a member's behalf for a period of 6 months, it also requires that members withdraw from employment in the construction or construction related industry or trade either as an employee or on a self-employed basis.

Conclusion

22. Therefore, the Superintendent proposes to revoke the registration of section 4.01 of the 1988 Plan pursuant to section 18(1)(e) of the Act, refuse to register the amendments to section 6.01 of the Plan as set out in Amendment Nos. 6 and 13, refuse to register amendments to the first paragraph of section 8.02 of the Plan as set out in Amendments Nos. 9, 13 and 14 and refuse to register the amendment to section 10.01(ii) of the Plan as set out in Amendment No. 8 pursuant to section 18(1)(d) of the Act.
23. The Superintendent also proposes to order under section 19(1) of the Act that Trustees of the Plan refrain from requiring Plan members to sign a certificate confirming that they will not work in any union or non-union Boilermaker Union employment or requiring that Plan members confirm that they are retiring from employment within the construction or construction related industry or trade as a precondition for the receipt of an enhanced early retirement benefit, and that the Trustees refrain from applying section 6.01 of the Plan to retiring Plan members.
24. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED, REVOKE THE REGISTRATION OF THE AMENDMENT AS PROPOSED HEREIN AND I MAY REFUSE TO REGISTER THE AMENDMENTS, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York, Ontario, September 22, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450** (the "Pension Plan");

TO: Maritime Life Assurance Company
7 Maritime Place
PO Box 1030
Halifax NS B3J 2X5

Attention: Kari LeLacheur,
Legislative Advisor,
Pension Services

**Administrator of the
Pension Plan**

AND TO: Cunningham Foundry
A Division of
Quint Industries Inc.
21 Yale Cres.
St. Catharines ON L2R 2Y6

Attention: Brian Crawford,
Chief Financial Officer
Employer

AND TO: KPMG Inc.
PO Box 976
21 King Street West, Suite 510
Hamilton ON L8N 3R1

Attention: John Athanasiou,
Corporate Recovery Specialist
**Trustee in Bankruptcy of
Cunningham Foundry
A Division of
Quint Industries Inc.**

AND TO: CAW Local 523

16 Steel Street
Welland ON L3B 3L9

Attention: Gord Chatwin
Union

**NOTICE OF PROPOSAL TO MAKE
AN ORDER**

I PROPOSE TO MAKE AN ORDER that the Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450, be wound up in full effective July 31, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

**I PROPOSE TO MAKE THIS ORDER FOR
THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING
shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **Pension Plan for Employees of Rio Tinto North American Services Limited, Registration No. 553362;**

TO: **QIT-Fer et Titane Inc.**
1625 Marie-Victorin
Tracy, Quebec
J3R 1M6

Attention: Rolland G. Morier,
Senior Vice-President, Finance
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Rio Tinto North American Services Limited, Registration No. 553362 (the "Plan"), to QIT-Fer et Titane Inc., the balance remaining after payments to the surplus sharing members have been made as defined in the Surplus Distribution Agreement. Said amount is estimated to be \$7,531,352 as at September 30, 2002. This amount shall be adjusted for investment earnings and expenses to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all the surplus entitlements of the members have been paid or otherwise provided for in accordance with the terms of the Surplus Distribution Agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. QIT-Fer et Titane Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 1, 2000.
3. As at September 30, 2002, the surplus in the Plan was estimated at \$8,814,230.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and the members that the amount of the surplus to be distributed to each surplus sharing member is equal to 2 years of additional pension payments (without the amount of any indexing paid on and after January 1, 2001) plus interest at the rate of 6% per annum from the wind-up date. After the payments to each surplus sharing member have been made, the remaining balance will be paid to the applicant as set out in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 89.6% of the surplus to the Employer as of the effective date of the wind up.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 6th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Copy: Ms. Susan E. Fremen, Mercer Human
Resource Consulting

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232967 (the "Plan")**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher,
Consultant
Appointed Administrator

AND TO: **Outboard Marine
Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax,
Manager, Benefits Administration
Employer

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumburg IL 60173

Attention: Mr. Alex D. Moglia
Trustee in Bankruptcy

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Receiver

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wholly wound up effective August 1, 2000 through December 20, 2000.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

¹NOTE -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 16th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the Pension Benefits Act,
R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the
Superintendent of Financial Services to Make an
Order under section 69 of the Act, relating to
**the Retirement Plan for Employees of
Outboard Marine Corporation of Canada
Ltd., Registration Number 232975 (the
"Plan")**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher,
Consultant

Appointed Administrator

AND TO: **Outboard Marine
Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax,
Manager, Benefits Administration

Employer

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Receiver

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumburg IL 60173

Attention: Mr. Alex D. Moglia
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect
of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wholly wound up effective
August 1, 2000 through April 9, 2001.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 16th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Uniroc Mfg., Division of Atlas Copco Canada Inc.** **Canadian Non-Union Employees' Pension Plan, Registration No. 513457;**

TO: **Atlas Copco Canada Inc.**
Secoroc, a Division of
Atlas Copco Canada Inc.
1157 Blair Road
Burlington ON L7M 1P9

Attention: Mr. Jeff Hagar,
Vice President Finance
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Uniroc Mfg., a Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457 (the "Plan"), to Atlas Copco Canada Inc. in the amount of \$703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that provision has been made for the pension benefits of one unlocated plan member and that the employees' share of the surplus has been distributed to the members, former members and others as set out in the application.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Atlas Copco Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective August 26, 1994.
3. As at August 26, 1994, the surplus in the Plan was estimated at \$1,279,306.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and other members (as defined in the application) and 89% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 55% to the Employer; and
 - b) 45% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (adjusted for investment earnings and expenses in accordance with the surplus sharing agreement and application.)
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 17th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Leon Caron,
Atlas Copco Canada Inc.
Ms. Susan L. Nickerson,
McMillan Binch LLP
Mr. Michael Mazzuca,
Koskie Minsky

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Alderbrook Industries Limited Pension Plan, Registration Number 0574764** (the "Pension Plan");

TO: Mackenzie Financial Corporation
 150 Bloor Street West
 Suite M111
 Toronto ON M5S 3B5

Attention: David Lin,
 Pension Officer
Administrator of the Pension Plan

AND TO: Alderbrook Industries Limited
 885 Sandy Beach Road
 Pickering ON L1W 3N6

Attention: Linda Parker,
 Human Resources Manager
Employer

AND TO: Deloitte & Touche Inc.
 BCE Place
 181 Bay Street
 Suite 1400
 Toronto ON M5J 2V1

Attention: Huey Lee,
 Financial Advisory Services
Receiver and Manager of Alderbrook Industries Limited

AND TO: Shiner Kideckel Zweig Inc.

10 West Pearce Street
 Suite 4
 Richmond Hill ON L4B 1B6

Attention: Joel Kideckel

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Alderbrook Industries Limited Pension Plan, Registration Number 0574764, be wound up in full effective March 31, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998;**

TO: **PricewaterhouseCoopers Inc.**
c/o Ayesworth Thompson Phelan
O'Brien
222 Bay Street
Ernst & Young Tower
PO Box 124, 18th Floor
Toronto Dominion Centre
Toronto ON M5K 1H1

Attention: Peter R. Welsh
Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to payment out of the AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998 (the "Plan"), to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc., in the amount of \$154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the members' share of the negotiated surplus has been paid.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Applicant is the Trustee in Bankruptcy of AM International Inc. (the employer as defined in the Plan (the "Employer").
2. The Plan was wound up effective October 17, 1996.
3. As at March 31, 2002, the surplus in the Plan was estimated at \$399,640.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and other members (as defined in the application) and 83.3% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 38.75% to the Employer; and
 - b) 61.25% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Applicant has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 38.75% of the surplus as at March 31, 2002, plus investment earnings to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Tony Karkheck,
PricewaterhouseCoopers Inc.
Dona Campbell,
Sack Goldenblatt Mitchell

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Mosler Canada Inc., Registration Number 941732 (the "Plan")**;

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin,
Plan Wind-up Consultant,
Investments & Pensions
Appointed Administrator

AND TO: **Mosler Canada Inc.**
150 Britannia Road East, Unit 12
Mississauga ON L4Z 2A4

Attention: Ms. Janet Leigh
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective September 23, 2001.

REASONS:

1. Cessation or suspension of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant part of the business has been discontinued at a specific location pursuant to clause 69(1)(e) of the Act.

3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTT — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c. P.8*, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28* (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration No. 0220723**;

TO: **Halliburton Group Canada Inc.**
 333 — 5th Avenue S.W.
 Suite 1000
 Calgary, Alberta
 T2P 3B6

Attention: Mr. Ron Ruckaber,
 Senior Benefits Advisor
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration No. 0220723 (the "Plan"), to Halliburton Group Canada Inc. in the amount of \$932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Halliburton Group Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective November 1, 1990.
3. As at November 1, 1990, the surplus in the Plan was estimated at \$677,295.
4. The application is based on a court order for the distribution of surplus funds pursuant to section 7a(2)(c) of Regulation 708/87 that was granted to the Employer by the Ontario Superior Court of Justice on February 6, 2002, whereby 100% of the surplus in the Plan at the date of payment is to be distributed to the Employer.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (plus investment earnings and less payment of actuarial expenses of the Plan.)
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(2) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**YOUR WRITTEN NOTICE REQUIRING A
HEARING must be delivered to:**

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Greg Winfield,
McCarthy Tétrault



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration No. 0474346**;

TO: **Halliburton Group Canada Inc.**
 333 — 5th Avenue S.W.
 Suite 1000
 Calgary, Alberta
 T2P 3B6

Attention: Mr. Ron Ruckaber,
 Senior Benefits Advisor
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration No. 0474346 (the "Plan"), to Halliburton Group Canada Inc. in the amount of \$139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Halliburton Group Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective November 1, 1990.
3. As at November 1, 1990, the surplus in the Plan was estimated at \$97,240.
4. The application is based on a court order for the distribution of surplus funds pursuant to section 7a(2)(c) of Regulation 708/87 that was granted to the Employer by the Ontario Superior Court of Justice on February 6, 2002, whereby 100% of the surplus in the Plan at the date of payment is to be distributed to the Employer.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (plus investment earnings and less payment of actuarial expenses of the Plan.)
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(2) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**YOUR WRITTEN NOTICE REQUIRING A
HEARING must be delivered to:**

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-
BUNAL, WITHIN THIRTY (30) DAYS
FROM THE DATE THIS NOTICE OF PRO-
POSAL IS SERVED ON YOU, A WRITTEN
NOTICE THAT YOU REQUIRE A HEAR-
ING, I MAY MAKE THE ORDER PRO-
POSED HEREIN.**

DATED at Toronto, Ontario, this 29th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Greg Winfield,
McCarthy Tetrault



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404;**

TO: **United Dominion Industries Corporation**
 c/o Mr. Jeffrey L. Nugent
 SPX Corporation
 501 South Heilbron Drive
 MEDIA, PA 19063
 USA
Applicant and Employer

AMENDED NOTICE OF PROPOSAL
(amended October 31, 2003)

WHEREAS United Dominion Industries Limited made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money that is surplus dated December 21, 2000.

AND WHEREAS effective June 30, 2001, United Dominion Industries Limited was amalgamated with UDI Nova Scotia Holding Company pursuant to the *Companies Act* of Nova Scotia, being Chapter 81 of the Revised Statutes of Nova Scotia, 1989 to form United Dominion Industries Corporation.

AND WHEREAS as a result of such amalgamation, United Dominion Industries Corporation assumed all of the obligations and liabilities of United Dominion Industries Limited, including the sponsorship of the Pension Plan for Hourly-

Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404, and is therefore the Applicant and Employer.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of \$2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the plan and the distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. United Dominion Industries Corporation is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 2000.
3. As at June 30, 2000, the surplus in the Plan was estimated at \$2,755,586.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the members, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:



- a) 80% to the Employer; and
 - b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan adjusted for investment earnings and expenses related to the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP
Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526** to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 81(5) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526**, under section 18(1)(d) of the Act.

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 18(1)(d) of the Act.

TO: **Blue Circle Canada Inc.**
c/o St. Marys Cement Inc.
55 Industrial St., 2nd floor
Toronto, ON M4G 3W9

Attention: Patricia Brundit,
Manager Human Resources
Services
Employer and Administrator

NOTICE OF PROPOSALS TO REFUSE

I PROPOSE TO:

- 1. REFUSE TO CONSENT** to the transfer of assets referred to in the Report on the Actuarial Valuation for Funding Purposes as of January 1, 1999, prepared by William M. Mercer Limited (the "Transfer Report"), from the Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526 (the "TCG Plan") to the Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies (formerly the Pension Plan for the Designated Employees of St. Marys Cement Corporation and Subsidiary Companies), Registration Number 530493 (the "Blue Circle Plan"), under section 81(5) of the Act.
- 2. REFUSE TO REGISTER** Amendment No. 1 to the TCG Plan effective December 31, 1998, attached to the Application for Registration of Pension Plan Amendment (the "TCG Amendment No. 1"), under section 18(1)(d) of the Act.
- 3. REFUSE TO REGISTER** Amendment No. 4 to the Blue Circle Plan effective January 1, 1999, attached to the Application for Registration of Pension Plan Amendment (the "Blue Circle Amendment No. 4"), under section 18(1)(d) of the Act.

REASONS FOR THE PROPOSALS TO REFUSE:

1. An application was made to the Superintendent of Financial Services (the "Superintendent") for consent to a transfer of assets from the TCG Plan to the Blue Circle Plan as of January 1, 1999 (the "Asset Transfer"). As required by Financial Services Commission of Ontario Policy A700-251 the Transfer Report was filed with the



Superintendent as part of the application for consent to the Asset Transfer.

2. The Transfer Report shows that the TCG Plan (which is the exporting plan) has a solvency excess of \$637,800 as of January 1, 1999 and the Blue Circle Plan (which is the importing plan) has a solvency deficiency of \$6,802,700 as of January 1, 1999, before the Asset Transfer and will have a solvency deficiency of \$6,164,900 as at January 1, 1999, after the Asset Transfer.
3. Section 81(5) of the Act requires the Superintendent's consent to the Asset Transfer, whether section 81(1) or section 81(8) of the Act applies to that transfer. Section 81(5) provides that:

The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

4. Section 11(a) of FSCO Policy A700-251 provides that:

The Superintendent may decide that the benefits are not protected where:

- (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0;

5. The Transfer Report indicates that transfer ratio of the exporting plan (the TCG Plan) prior to the Asset Transfer is 1.19 (after rounding) and the transfer ratio of the importing plan (the Blue Circle Plan) is .93 (after rounding) both before and after the Asset Transfer. Therefore, the pension and other benefits of the members and former members of the exporting plan (the TCG Plan) are not protected in the Asset Transfer.

6. Therefore the Superintendent proposes to refuse to consent to the Asset Transfer from the TCG Plan to the Blue Circle Plan under section 81(5) of the Act.
7. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the TCG Amendment No. 1 with the Superintendent.
8. TCG Amendment No. 1 provides that members shall cease accruing benefits under the TCG Plan effective December 31, 1998, shall commence accruing benefits under the Blue Circle Plan effective January 1, 1999, and the assets and liabilities shall be transferred from the TCG Plan to the Blue Circle Plan, subject to the prior approval of such transfers by the appropriate regulatory authorities (which would include the Superintendent). Upon the transfer of assets and liabilities, the TCG Plan shall be terminated. The TCG Plan, with the TCG Amendment No. 1, would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the TCG Amendment No. 1 were consented to and registered respectively.
9. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the Blue Circle Amendment No. 4 with the Superintendent.
10. Blue Circle Amendment No. 4 provides that TCG Plan members shall commence accruing benefits under the Blue Circle Plan on terms identical to the TCG Plan up to June 30, 1999 and effective July 1, 1999 the TCG Plan members shall contribute and accrue benefits in accordance with the Blue Circle Plan; the Blue Circle Plan is amended to



assume liabilities for all benefits accrued under the TCG Plan in respect of all active and non-active members of the TCG Plan; and the assets from the TCG Plan shall be transferred to the Blue Circle Plan after all regulatory approvals have been obtained. The Blue Circle Plan with the Blue Circle Amendment No. 4 would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the Blue Circle Amendment No. 4 were consented to and registered respectively.

11. Therefore the Superintendent proposes to refuse to register the TCG Amendment No. 1 and the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.
12. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING

before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THE ASSET TRANSFER AND I MAY REFUSE TO REGISTER THE TCG AMENDMENT NO. 1 AND THE BLUE CIRCLE AMENDMENT NO. 4, AS PROPOSED IN THIS NOTICE OF PROPOSALS.

DATED at Toronto, Ontario, July 18, 2003.
K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



Notices of Proposal to Refuse to Consent to Applications of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under section 78(1) of the Act submitted by Weavexx Corporation, in respect of the

Retirement Income Plan For Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration No. 0264655 (the "Plan");

AND IN THE MATTER OF an amendment to the Plan passed by the Board of Directors of Weavexx Corporation on September 23, 1999 (the "Plan Amendment");

AND IN THE MATTER OF a Wind Up Report submitted by Weavexx Corporation in respect of the Plan dated September 5, 1997 (the "Report");

AND IN THE MATTER OF a proposal to issue an Order under section 88 of the Act.

TO: **BTR Canada Holdings Inc.**
c/o Ms. Allyn Jerome
Benefit Specialist
Invensys Inc.
33 Commercial St. B52-S1
Foxboro MA 02035

Employer and Administrator of the Plan

AND TO: **Watson Wyatt Canada**
One Queen St. East Suite #1100
Toronto Ontario M5C 2Y4

Attention: Paul Timmins
Agent for the Employer and Administrator of the Plan

AND TO: **Amalgamated Clothing and Textile Workers' Union, Local 2324**

Ontario Joint Council, Union of Needlentrade, Industrial and Textile Employees
P.O. Box 20007,
RPO Cornwall Square,
Cornwall Ont.
K6H 7H6

Attention: Patrick Quig
Union

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT to the application dated September 22, 1999, submitted by Weavexx Corporation for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act (the "Application").

REASONS FOR REFUSAL:

1. The application and Plan Amendment were submitted by Weavexx Corporation, who, at the time the application was made and the Plan Amendment adopted, was the employer and administrator of the Plan. On December 2, 1999, a Transfer and Assignment of Pension Plan agreement was entered into between Weavexx Corporation and BTR Canada Inc. As a result, BTR Canada Inc, who is now the employer and administrator of the Plan, is receiving this notice.
2. Weavexx Corporation submitted the application to withdraw surplus from the Plan, and the Plan Amendment to the Superintendent of Financial Services (the "Superintendent") on October 5, 1999.



3. The application does not comply with clause 79(3)(b) of the Act because it fails to establish the employer has an entitlement to surplus under this Plan.
4. The Plan is the continuation of a Plan established in 1957 by a predecessor employer, *The New Retirement Income Plan for the Employees of Kenwood Mills Limited* (the "1957 Plan"), under which a pension fund was established and a trust agreement was entered into between Kenwood Mills Limited and the Montreal Trust Company dated March 21, 1958 (the "1958 Trust agreement").
5. The 1957 Plan provided that all contributions of members and the Company shall be paid into a trust fund and administered by a trustee in accordance with an agreement between the trustee and the company. It also provided that should the Plan ever be discontinued, the contributions made by the Company cannot be withdrawn, but shall remain to the credit of the members, who shall be entitled to the paid-up benefits resulting from all contributions previously made by the Company on their behalf.
6. The preamble to the 1958 Trust Agreement included a clause that under the 1957 Plan "...funds will be remitted to the Trustee, which funds as and when received by the Trustee will constitute a trust fund to be held for the benefit of the employee members of the Plan or their beneficiaries;..."
7. The 1958 Trust Agreement also contained a clause (Article Third) that "...no part of the Trust Fund (other than such part as is required to pay taxes and administration fees and expenses) shall be used for, or diverted to, purposes other than for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates."
8. The 1958 Trust Agreement specifically provided that the Trustee's power to pay out funds on termination was subject to the provisions of Article Third. Similarly, the provision which granted the Company power to modify or amend the 1958 Trust Agreement was made subject to the provisions of Article Third.
9. The 1958 Trust Agreement did not contain a provision authorizing the Company to revoke the 1958 Trust Agreement.
10. There is no evidence that the 1958 trust was ever terminated or exhausted.
11. Therefore a trust was created in 1958 which covered surplus assets. The employer was not a beneficiary of the trust nor did it have the power to revoke the trust. Further, its power to amend the trust was subject to the provision that the funds were to be used for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates.
12. The Plan was amended in 1981 to provide that in the event of discontinuance of the Plan, after providing for the maximum benefits permitted by Revenue Canada, any surplus must be returned to the Company. Similar language was used when the Plan was split into two separate plans in 1985, and when the Plan was again amended and restated effective January 1, 1988.
13. The Trust Agreement was restated and amended on March 1, 1989 to provide that, on termination, "...any balance remaining in the Trust Fund, after satisfaction of all

obligations accrued to the date of termination to employees and their beneficiaries participating in the Plan at the date of its termination not exceeding the maximum benefit limitations pursuant to the *Income Tax Act* (Canada) or other applicable legislation, may revert to the Company..."

14. The terms of the 1958 Trust Agreement do not authorize a payment of surplus to the Employer. The amendments referred to in paragraphs 12 and 13 constitute a revocation or partial revocation of the trust property which is not authorized in the original trust agreement, and are therefore invalid.
15. Such further and other reasons as may come to my attention.

AND I PROPOSE TO REFUSE TO CONSENT
to register the Plan Amendment dated
September 23, 1999.

REASONS FOR REFUSAL:

16. The Plan Amendment includes a paragraph that makes the Plan Amendment conditional on the Superintendent approving the payment of part of the surplus in the Plan to the employer. As the Superintendent proposed to refuse an application for payment of surplus to the employer, the condition of the Plan Amendment will not be met, and the Plan Amendment will not be operative. The Superintendent therefore proposes to refuse to register the Plan Amendment.

17. Such further and other reasons as may come to my attention.

AND I PROPOSE TO REFUSE TO APPROVE
the wind up report dated September 5, 1997,
pursuant to subsection 70(5) of the Act.

REASONS FOR REFUSAL:

18. Clause 70(1)(c) of the Act provides that the administrator of a pension plan that is to be

wound up in whole or in part shall file a wind up report that sets out the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits.

19. The Report with addendum dated May 11, 1998, set out the distribution of pension benefit entitlements for the purposes of the Act. The Report identified a surplus of wind up assets over wind up liabilities, but did not propose a scheme of distribution of the surplus assets. The Report did indicate that the employer would be making an application to deal with the surplus, which the Superintendent is now proposing to refuse to consent to for reasons set out in paragraphs 1 to 14.
20. The Report does not comply with the Act because it does not contain a plan of distribution of all of the assets of the Plan as required by clause 70(1)(c) of the Act. Accordingly, the Superintendent may refuse to approve it under subsection 70(5) of the Act.
21. In addition, as the Report does not propose a distribution of surplus that complies with the applicable Plan and Trust documents and section 79(4) of the Act, it does not protect the interests of members and former members as required by subsection 70(5) of the Act.
22. As grounds for refusing to approve the wind up report relate to the absence of any distribution of surplus, and not to the proposed distribution of pension benefit entitlements that was set out in the Report, the distribution of pension benefit entitlements set out in the Report and authorized on behalf of the Superintendent of Pensions under subsection 70(3) by letter dated July 13, 1998,



shall continue to be valid pending the submission of a new wind up report that complies with the Act.

23. Such further and other reasons as may come to my attention.

AND I PROPOSE TO ORDER that the administrator of the plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the 1957 Plan and the 1958 trust agreement by providing for the distribution of the surplus plan assets to members, former members, and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act;

REASONS FOR THE PROPOSED ORDER:

24. Under section 88(2)(c) of the Act the Superintendent may make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of the Act, regulations or pension plan. For the reasons set out in paragraph 19 and 20, the Report submitted does meet the requirements of the Act or the Pension Plan for the purposes of section 88(2)(c).

25. As the employer has failed to establish an entitlement to surplus, subsection 79(4) of the Act applies with respect to the distribution of surplus accrued after December 31, 1986 among members, former members and any other persons entitled to payments under the plan on the date of wind up. For the period prior to January 1, 1987, surplus accrual is to be determined in accordance with the applicable Plan and trust docu-

ments which set out entitlement to the trust property on termination of the trust.

26. Subsection 70(2) of the Act requires the Superintendent to approve a wind up report before any payment may be made out of a pension plan that has issued a notice of proposal to wind up. Therefore, a new wind up report which complies with the Plan, the terms of the trust and Act is necessary to fully wind up the Plan and distribute the surplus assets to the members, former members and other persons entitled to payments out of the Plan.

27. As the Plan was terminated effective November 30, 1996, and a new wind up report is needed to distribute the surplus assets in the Plan, an Order under section 88 is needed to ensure the Plan is completely wound up and the surplus assets are distributed in accordance with the Act, Plan and Trust documents on a timely basis.

28. The new wind up report shall be delivered to the Superintendent with 60 days of an Order being made pursuant to this notice.

29. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the Act, if, you deliver to the Tribunal, within thirty (30) days of the date of service of this Notice of Proposal, notice in writing requiring a hearing.¹

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

**ANY NOTICE REQUIRING A HEARING**

should be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU FAIL TO DELIVER TO THE TRIBUNAL within thirty (30) days from the date this Notice of Proposal is served on you a written notice that you require a hearing, I may make the order proposed in this Notice of Proposal.

DATED at Toronto, Ontario, this 30th day of May, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, to the **Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303** under section 80 of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, under section 18(1)(d) of the Act.

TO: **Bowater Canadian Forest Products Inc.**
 1000 de la Gauchetiere West
 Suite 2820
 Montreal QC H3B 4W5

Attention: Claudine Morin-Massicotte
Administrator

NOTICE OF PROPOSALS

I PROPOSE TO:

- 1. REFUSE TO CONSENT TO** the transfer of assets from the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511** (the "Bowater Plan"), to the **Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303** (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset

Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 81 of the Act.

- 2. REFUSE TO REGISTER** an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

REASONS FOR THE PROPOSALS TO REFUSE:

1. Bowater Canadian Forest Products Inc. ("Bowater") is the administrator of the Bowater Plan. Bowater and Weyerhauser Canada Ltd. ("Weyerhauser") entered into an Asset Purchase Agreement on August 4, 1998 relating to the sale of a Dryden/Ear Falls pulp, paper and lumber business (the "Asset Purchase Agreement"). Under the terms of the Asset Purchase Agreement Weyerhauser agreed to offer employment to a number of Bowater employees (the "Transferred Members"), and the companies agreed, subject to regulatory consent, that a pro rata share of the assets of the Bowater Plan would be transferred to the Weyerhauser Plan, calculated on the basis of the liabilities attributable to Transferred Members relative to the total liabilities of the Bowater Plan as at the Closing Date determined on a going concern basis and using the methods set out in Section 11.3(b)(v) of the Asset Purchase Agreement.

2. An application was made to the Superintendent of Financial Services (the "Superintendent") for consent to transfer assets from the Bowater Plan to the Weyerhauser Plan in respect of the Transferred Members determined as at September 29,



1998, pursuant to the terms of the Asset Purchase Agreement.

3. Prior consent of the Superintendent to the transfer of assets is required by section 80(5) of the Act. Section 81(5) provides that the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the Bowater Plan.
4. Financial Services Commission of Ontario Policy A700-200 (the "Policy") stipulates the guidelines the Superintendent will follow when dealing with the transfers of assets resulting from the sale of a business. The tests for determining whether the proposed transfer complies with section 80(5) of the Act (referred to in the Policy as section 81(5)) are set out in paragraph (8)(a) of the Policy. Under paragraph (8)(a) of the Policy where a successor employer assumes responsibility in whole or in part for the pension benefits under the employer's pension plan, and under the wind up provisions of the plan the employer has a clear entitlement to surplus, the value of the assets to be transferred shall be assets having a market value as at the review date of not less than the lower of the asset transfer value or the solvency liability as set out in the transfer report.
5. The Transfer Report confirms that there is no surplus in the Bowater Plan on a solvency basis. Therefore no surplus will be transferred from the Bowater Plan to the Weyerhauser Plan.
6. The Asset Transfer Report sets out the amount of assets to be transferred from the Bowater Plan to the Weyerhauser Plan in accordance with (1) the terms of the Asset Purchase Agreement and (2) under paragraph (8) (a) of the Policy. The minimum transfer amount determined under the Policy is \$1,733,614. Therefore, in order to protect the pension and other benefits of the Transferred Members the amount of assets to be transferred is \$1,733,614.
7. The transfer amount calculated pursuant to the Asset Purchase Agreement is equal to \$1,351,151 as at September 29, 1998. The Transfer Report recommends that based on the terms of the Asset Purchase Agreement, an amount of \$1,351,151 should be transferred from the Bowater Plan to the Weyerhauser Plan. This amount is \$382, 463 less than is required under paragraph 8(a) of the Policy. Therefore, the proposed transfer of assets does not protect the pension benefits and any other benefits of the Transferred Members for the purposes of section 80(5) of the Act.
8. In a letter dated November 19, 2002, William M. Mercer submitted that the Superintendent should approve the proposed asset transfer in the amount of \$1,351,151 under paragraph (12) of the Policy. It states that the terms of the Purchase Agreement were negotiated on an arms-length basis, and that both parties believe the going concern transfer basis to be fair and equitable. Additionally, the proposed transfer amount represents a small proportion of the Bowater Plan assets.
9. Paragraph (12) of the Policy states that the Superintendent may consent to an asset transfer on an equitable basis under exceptional circumstances. The Superintendent is not aware of any exceptional circumstance in this case.



10. The proposed asset transfer is not equitable to the Transferred Members because this amount is \$382,463 less than is required under paragraph 8(a) of the Policy and therefore, an insufficient proportion of the assets in the Bowater Plan would be transferred to the Weyerhauser Plan.
11. Therefore the Superintendent proposes to refuse to consent to the transfer of assets from the Bowater Plan to the Weyerhauser Plan under section 80(5) of the Act.
12. In order to facilitate the transfer of assets referred to in the Transfer Report, Bowater filed an application to register an Amendment with the Superintendent. The Amendment provides for the transfer of the assets on account of the benefits of the Transferred Members to the Weyerhauser Plan, in accordance with the terms of the Asset Purchase Agreement.
13. Since the Amendment would effect an asset transfer that does not protect the pension and other benefits of the Transferred Members and the Superintendent has proposed to refuse to consent to the transfer under section 80(5) of the Act, the Bowater Plan with the Amendment would cease to comply with the Act.
14. Therefore the Superintendent proposes to refuse to register the Amendment under section 18(1)(d) of the Act.
15. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THE TRANSFER OF ASSETS AND I MAY REFUSE TO REGISTER THE AMENDMENT, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York, Ontario, July 18, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Salaried Employees of Marsh Engineering Limited, Registration Number 276030**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney
Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake, President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner
Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Revised Pension Plan for Salaried Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 276030; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them by appointing Morneau Sobeco as administrator on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. A wind up report has been filed by the Administrator, which report remains under review by staff; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the Administrator on May 29, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:



REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 68.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is \$598,548.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 27th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Notices of Proposal to Make a Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, Registration Number 384313**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney
Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake, President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul, Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America**
1031 Barton Street East
Hamilton ON L8L 3E3

Attention: Dave MacIntosh, Local President
Union Representative of the Plan members

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 384313; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them with Morneau Sobeco on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions effective March 16, 2000; and
6. A wind up report has been filed by the appointed Plan administrator, which report remains under review by staff; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the appointed administrator on May 29, 2003.



NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 63.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is \$1,248,965.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 27th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441** (the "Plan");

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561
Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON MSC 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America (the "Plan"), is registered under the Act as Registration Number 697441; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed The Standard Life Assurance Company administrator of the Plan on April 17, 2003; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on July 17, 2003 to make an Order that the Plan be wound up effective December 20, 2002; and
5. The appointed administrator has assessed the solvency ratio of the Plan at the proposed wind up date to be 75.5%, and has reduced pensions in payment from the Plan to 75.5% of the full benefit effective July 1, 2003 until further notice; and
6. The appointed administrator will be filing an application for a Declaration that the Guarantee Fund applies to the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:



REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 75.5%.
2. The claim against the Guarantee Fund as at the wind up date is estimated to be \$4,639,000.
3. The employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING
shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 18th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433 (the "Plan")**;

TO: **The Standard Life Assurance Company**

1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**

250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **Paul M. Casey & Associates, Ltd.**

c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Non-Union employees of Frost Fence Inc. (the "Plan"), is registered under the Act as Registration Number 697433; and

2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, appointed The Standard Life Assurance Company administrator of the Plan on April 17, 2003; and
4. A Notice of Proposal to Make an Order that the Plan be wound up effective December 20, 2002, was issued by the Deputy Superintendent, Pensions, on July 17, 2003; and
5. The appointed administrator has assessed the solvency ratio of the Plan at the proposed wind up date to be 74.3%, and has reduced pensions in payment from the Plan to 74.3% of the full benefit effective July 1, 2003 until further notice; and
6. The appointed administrator will be filing an application for a Declaration that the Guarantee Fund applies to the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 74.3%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed administrator to be \$1,382,000.
3. The employer, Frost Fence Inc. was assigned into bankruptcy on December 20, 2002.



4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 18th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441** (the "Plan");

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561
Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON MSC 2V9

Attention: Mr. Paul M. Casey
Trustee in Bankruptcy

ORDER

ON or about July 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated July 17, 2003, to Make an Order that the Plan be wound up in whole effective December 20, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Galfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Pension Plan for All Salaried and Non-Union Hourly Employees of Participating Affiliates of Bracknell Corporation, Registration Number 0956789** (the "Pension Plan");

TO: **Manufacturers Life Insurance Company**

500 King North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Yolanda Pingos
Administrator of the Pension Plan

AND TO: **Bracknell Corporation**
400 Weston Road
Toronto ON M9L 3A2

Attention: Kae Baiocco,
Benefits Administrator
Employer

ORDER

ON the 12th day of May 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 6th day of May, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for All Salaried and Non-Union Hourly Employees of Participating Affiliates of Bracknell Corporation, Registration No. 0956789..

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for All Salaried and Non-Union Hourly Employees of Bracknell Corporation, Registration No. 0956789, be wound up in whole effective November 1, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Suite 900
Toronto ON M5H 1V8

Attention: Roger Deck

**Interim Receiver for
The State Group Limited,
a Participating Affiliate of
Bracknell Corporation**

DATED at Toronto, Ontario, this 2nd day of June, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Registered Pension Plan for Employees of SuperPac Acquisitions Inc., Registration Number 1054071 (the "Plan")**;

TO: **Sun Life Financial and Clarica**
Group Savings Legislation and Documentation
227 King Street South
Waterloo ON N2J 4C6

Attention: Ms. Audrey Humphrey
Appointed Administrator of the Plan

AND TO: **SuperPac Acquisitions Inc.**
777 Laurel Street
Cambridge ON N3H 3Z1

Attention: Ms. Pearl Evans
Employer

AND TO: **Spergel & Associates Inc.**
505 Consumers Road
Suite 200
North York ON M2J 4V8

Receiver for SuperPac Acquisitions Inc.

ORDER

ON the 13th day of June 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order (the "Notice of Proposal") to the Administrator of the Plan, the Employer, and the Receiver for the Employer, pursuant to subsection 69(1) of the Act, that the Plan be wholly wound up effective January 23, 2002.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective January 23, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at Toronto, Ontario, this 8th day of August, 2003.

Tom Galfetto,
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting **Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan")**;

TO: **Thompson Actuarial Limited**
87 Wolverleigh Blvd.
Toronto ON M4J 1R8

Attention: Andre Choquet, FCIA, FSA
Actuary

**Administrator of the
Pension Plan**

AND TO: **Commercial Aluminum
Limited**
240 Barton Road
Weston ON M9M 2W6

Attention: Suzanne Lam-Fitzgibbon
Employer

ORDER

ON the 23rd day of June 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 20th day of June, 2003, pursuant to subsection 69(1) of the Act to the Administrator and to the Employer to wind up in whole Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289, be wound up in whole effective December 31, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund;
2. The employer fails to make contributions to the pension fund as required by this Act or the regulation;
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
5. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued; and
6. All or part of the employer's business or all or part of the assets of the employer's are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for members of the employer's pension plan who becomes employee of the person.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:



SF Partners Inc.
(formerly Solursh Feldman Goldberg Inc.)
The Madison Centre
4950 Yonge Street, Suite 400
Toronto ON M2N 6K1

Attention: Brahm Rosen,
Senior Vice President

**Trustee in Bankruptcy for
Commercial Aluminum
(1993) Limited**

United Steelworkers of America
115 Albert Street
P.O. Box 946
Oshawa ON L1H 7N1

Attention: Wess Dowsett
Staff Representative

DATED at Toronto, Ontario, this 10th day of
September, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



Orders that the Pension Plan be Wound Up

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under subsection 69(1) of the Act relating to the **Pension Plan for Employees of Pelee Group, Registration Number 1062512;**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Ms. Nancy Galpin
Administrator of the Pension Plan for Employees of Pelee Group, Registration Number 1062512

AND TO: **Pelee Group**
P.O. Box 85
Kingsville ON N9Y 2E8

Attention: Ms. Paula Pope
Employer

ORDER

ON or about the 22nd day of January, 2003, the Deputy Superintendent, Pensions, issued to the Administrator and to the Employer a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Pension Plan for Employees of Pelee Group, Registration Number 1062512, be wholly wound up effective November 30, 2001, and that the wind up apply to all members who terminated employment on or after October 14, 2001.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Pension Plan for Employees of Pelee Group, Registration Number 1062512, be wholly wound up effective November 30, 2001 and that the wind up apply to all members who terminated employment on or after October 14, 2001.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act; and
2. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.

DATED at Toronto, Ontario, this 12th day of March, 2003.

Tom GOLFETTO,
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for the Non-Union Employees of Frost Fence Inc., Registration Number 697433 (the "Plan")**;

TO: **The Standard Life Assurance Company**

1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**

250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **Paul M. Casey & Associates, Ltd.**

c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON MSC 2V9

Attention: Mr. Paul Casey
Trustee in Bankruptcy

ORDER

ON or about July 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated July 17, 2003, to Make an Order that the Plan be wound up in whole effective December 20, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870** (the "Pension Plan");

TO: London Life Insurance Company
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist,
Group Retirement Services

Administrator of the Pension Plan

AND TO: Canadian Sport & Fitness Administration Centre
760 Belfast Road
Ottawa ON K1G 0Z5

Attention: Donia Albert,
Director of Finance
Employer

ORDER

ON the 5th day of August, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 5th day of August, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870, be wound up in whole effective August 30, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.

1000 Royal Bank Centre
90 Sparks Street
Ottawa ON K1P 5T8

Attention: Stanley Loisalle

Trustee in Bankruptcy of Canadian Sport & Fitness Administration Centre

DATED at Toronto, Ontario, this 24th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Ward Press Limited Pension Plan**,

Registration Number 0583187 (the "Pension Plan");

TO: **Sun Life Assurance Company of Canada**
225 King Street West
Toronto ON M4V 3C5

Attention: Paul Browett,
Pension Account Representative
Administrator of the Pension Plan

AND TO: **Ward Press Limited**
82 Carnforth Road
North York ON M4A 2K7

Attention: Donald Ward
President
Employer

ORDER

ON the 5th day of August, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 30th day of July, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Ward Press Limited Pension Plan, Registration Number 0583187.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Ward Press Limited Pension Plan, Registration Number 0583187, be wound up in whole effective June 30, 2001, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

BDO Dunwoody Limited
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mark G. Chow,
Vice-President

Receiver and Manager of Ward Press Limited

DATED at Toronto, Ontario, this 24th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Deputy Superintendent, Pensions, to Make an Order under section 69 of the Act, respecting the **Pension Plan for Toronto Employees of SDMS Communications Ltd.**, Registration Number 1000710;

TO: **Manulife Financial**
500 King Street North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Yolanda Pingos,
Discontinuance Underwriter
Appointed Administrator

AND TO: **SDMS, IMS Integrated Mailing Services**
220 Bartley Drive
Toronto ON M4A 1G2

Attention: The President
Employer

AND TO: **A. Farber & Partners Inc.**
300-1200 Sheppard Avenue East
North York ON M2K 2R8

Attention: Frieda Vasiloff
Trustee in Bankruptcy

ORDER

ON the 29th day of November, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order, pursuant to subsection 69(1) of the Act, that the Pension Plan for Toronto Employees of SDMS Communications Ltd., Registration Number 1000710 (the "Plan"), be wholly wound up effective March 31, 1993.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective March 31, 1993.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.

DATED at North York, Ontario, this 24th day of October, 2003.

Tom GOLFETTO,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

Order that the Board of Trustees Pay out of a Pension Fund the Cost of an Examination, Investigation or Inquiry

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF an Order under subsection 106(13) of the PBA made by the Superintendent of Financial Services relating to the **Plumbers Local 463 Pension Plan, Registration Number 0598532 (the "Plan")**;

TO: **Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund**
26 Caristral Street, Unit 3
Bowmanville, ON
L1C 3Y7

Attention: Larry Cann
Chairman of the Board of Trustees
of the Plumbers Local 463
Pension Plan Trust Fund
Administrator of the Plan

ORDER

I ORDER:

- a) That the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees") pay out of the Plumbers Local 463 Pension Plan Trust Fund (the "Fund") all of the cost of the examination, investigation or inquiry conducted by Morneau Sobeco and Deloitte & Touche LLP in respect of the Plan and the Fund; and
- b) That the Board of Trustees pay out of the Fund all of the cost of the reports prepared by Morneau Sobeco and/or Deloitte & Touche LLP following the examination, investigation or inquiry referred to in paragraph (a) of this order.

REASONS:

1. The Plan is a multi-employer pension plan administered by the Board of Trustees. The Plan primarily provides defined contribution pension benefits.
2. The Superintendent of Financial Services (the "Superintendent") received concerns from certain Plan members (the "concerned members") that the Plan is not being administered in accordance with the PBA and regulations made under the PBA. Specifically, the concerns focussed on issues with the administration of the Plan and certain real estate investments held by the Plan.
3. After an initial examination of documents associated with the Plan performed by employees of the Financial Services Commission of Ontario (FSCO), it was determined that given the nature of the review and the resources internally available it was necessary to retain external resources to complete the examination. In order to fully examine the issues raised and to ensure that the Plan was being administered in accordance with the PBA and regulations made under the PBA, the Superintendent solicited proposals from qualified firms to perform an examination of the Plan in relation to the concerns and to produce a report relating to that examination. In response to this request, the Superintendent received a proposal from the firms of Morneau Sobeco and Deloitte & Touche LLP (the "Examiners") to perform an examination, investigation or inquiry in respect of the Plan in relation to the concerns. The Superintendent accepted the proposal made by the Examiners and designated the Examiners to perform an examination, investigation or inquiry in



- respect of the Plan under section 106 of the PBA (the "Examination") on April 11, 2002.
4. The Examiners completed the Examination in respect of administrative and governance aspects of the Plan and issued a Preliminary Report covering these topics dated November, 2002. The Examination in respect of the real estate investments was subsequently completed and a final report including findings on the real estate investments (the "Final Report") was delivered in April 2003. The Examiners have provided invoices setting out the fees and disbursements associated with the Examination and the production of the Preliminary and Final Reports (together the "Reports"). A summary of the invoices including the calculation of the total fees and expenses in the amount of \$172,458.66 is attached as Schedule "A." The actual invoices are attached as Schedule "B."
 5. Copies of the Reports have been provided to the Board of Trustees and the concerned members. Both of these groups have had an opportunity to make submissions concerning the issue of who should bear the cost of the Examination in light of the contents of the Reports. Submissions concerning the cost issue were, in fact, received by the Superintendent from the Board of Trustees and certain of the concerned members.
 6. Subsection 106 (13) of the PBA states that the "Superintendent may order any person to pay all or part of the cost of an examination, investigation or inquiry" and "to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, investigation or inquiry ... if the Superintendent considers it to be reasonable and fair in the circum-
- stances to do so." Subsection 106 (14) specifically states that "an administrator or employer may be required to make a payment under" subsection 106 (13) of the PBA.
7. The Superintendent considers it reasonable and fair in the circumstances of this case to order the Board of Trustees to pay the cost of the Examination and Reports out of the Fund for the following reasons:
 - a. The aim of the Examination was to ensure that the Plan was being administered in accordance with the PBA and regulations made under the PBA thus protecting the pension benefits of the members of the Plan. As such, the members of the Plan as a whole will benefit from the Examination because it will result in compliance with the PBA, better administration of the Plan and a greater degree of protection for members' pension benefits. Therefore, it is reasonable and fair in the circumstances that the members as a whole should indirectly bear the cost of the Examination by requiring that the cost of the Examination and Reports be paid out of the Fund.
 - b. Certain documents and information required by the Examiners and requested from the Board of Trustees were not readily available to the Board of Trustees and therefore to the Examiners. Owing to inconsistent record-keeping practices, the Board of Trustees was required to obtain some documents and information from the Trustees' current or former agents and advisors. Certain documents and information were never provided because they did not exist or because they were unavailable to the Board of Trustees. As a result, the Examination was prolonged and made more complex.



- c. Section 106(13) of the PBA permits the Superintendent to order any person to pay the cost of the Examination and Reports where it is reasonable and fair in the circumstances to do so. Section 106(13) is not limited to the recovery of the costs of an examination performed using externally retained resources as in this case.
- d. The Examination involved extensive inquiries and the review of extensive documentation. The real estate transactions that were considered in the Examination were complex and involved a number of different parties. The Final Report comprised some 36 pages of findings.
- e. It is not "reasonable and fair" to order that the concerned members bear some or all of the cost of the Examination and Reports because the concerned members have raised legitimate issues concerning the administration of the Plan and certain investments held by the Plan. While the motivation for expressing the concerns is not known to the Superintendent, it is clear that the concerns were not frivolous. In addition, the receipt of concerns or enquiries from pension plan members is an important mechanism to assist the Superintendent in enforcing the requirements of the PBA. A requirement that the concerned members pay some or all of the cost of the Examination and Reports may have a chilling effect on members of the Plan or other pension plans who would otherwise bring concerns to FSCO's attention.
- f. It is not reasonable and fair to order that the Trustees personally bear some or all of the cost of the Examination and Reports because the majority of the current Trustees were not on the Board of Trustees at the

time of the majority of the decisions and actions under consideration in the Examination.

DATED at North York, Ontario, October 6th, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650**;

TO: **Kanematsu (Canada) Inc.**
c/o Brans, Lehun, Baldwin LLP
2401-120 Adelaide Street west
Toronto, Ontario
M5H 1T1

Attention: Mr. Thomas C.H. Baldwin
Applicant and Employer

CONSENT

ON or about July 8, 2003, the Superintendent of Financial Services caused to be served on Kanematsu (Canada) Inc. a Notice of Proposal dated July 4, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc. Registration No. 394650 (the "Plan"), to Kanematsu (Canada) Inc. in the amount of \$109,554 as of December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind-up of the Pension Plan for Employees of Kanematsu (Canada) Inc.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650, of \$109,554 as of December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind-up of the Pension Plan for Employees of Kanematsu (Canada) Inc., to Kanematsu (Canada) Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of August, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554;**

TO: **Sutherland-Schultz Inc.**
P.O. Box 5006
401 Fountain Street North
Cambridge, ON N3H 5P3
Attention: Wayne Brohman,
Manager, Financial Services
Applicant and Employer

CONSENT

ON or about June 2, 2003, the Superintendent of Financial Services caused to be served on Sutherland-Schultz Inc. a Notice of Proposal dated May 30, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554 (the "Plan"), to Sutherland-Schultz Inc. in the amount of \$148,170 as at April 30, 2002, plus investment earnings minus expenses incurred thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554, of \$148,170 as at April 30, 2002, plus investment earnings minus expenses incurred thereon to the date of payment to Sutherland-Schultz Inc.

THIS CONSENT IS EFFECTIVE ONLY

AFTER the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the Surplus Sharing Agreement, to which members, former members, and any other persons entitled on the wind up of the Plan, have been settled.

DATED at Toronto, Ontario, this 18th day of July, 2003.

Tom Golpetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services
copy: Claude N. Marchessault,
Barrister & Solicitor
Rick Jeffrey



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290**;

TO: **The Public Accountants Council for the Province of Ontario**
Suite 901
1200 Bay Street
Toronto, Ontario
M5R 2A5

Attention: Mr. Peter LaFlair,
Registrar
Applicant and Employer

CONSENT

ON or about July 10, 2003, the Superintendent of Financial Services caused to be served on the Public Accountants Council for the Province of Ontario a Notice of Proposal dated July 10, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290 (the "Plan"), to The Public Accountants Council for the Province of Ontario in the amount of \$669,897 as of July 1, 2000, subject to adjustments for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario Registration No. 207290, of \$669,897 as of July 1, 2000, subject to adjustments for investment earnings or losses and expenses to the date of payment, to The Public Accountants Council for the Province of Ontario

THIS CONSENT IS EFFECTIVE ONLY
AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of August, 2003.

Tom GOLFETTO,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services



Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959;**

TO: **John C. Bourinot**

John C. Bourinot Sales Limited
c/o Stephen O'Neill,
CFP, CLU, CH.F.C.
Sun Life of Canada
245 Fairview Mall Drive
Willowdale ON M2J 4T1

Applicant and Employer

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959, of \$384,900 as of August 1, 2000, subject to adjustments for investment earnings or losses and expenses to the date of payment, to John C. Bourinot Sales Limited.

DATED at Toronto, Ontario, this 15th day of July, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services
c. Timothy B. Lawrence, F.S.A., F.C.I.A.,
Cowan Wright Limited

CONSENT

ON or about May 12, 2003, the Superintendent of Financial Services caused to be served on John C. Bourinot Sales Limited a Notice of Proposal dated May 9, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959 (the "Plan"), to John C. Bourinot Sales Limited in the amount of \$384,900 as of August 1, 2000, subject to adjustments for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571;**

TO: **Complete Packaging Limited**
P.O. Box 24010
2470 Wyandotte Street East
Windsor, ON N8Y 4Y9

Attention: Pat Dumas
Applicant and Employer

CONSENT

ON or about July 17, 2003, the Superintendent of Financial Services caused to be served on Complete Packaging Limited a Notice of Proposal dated July 17, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571 (the "Plan"), to Complete Packaging Limited in the amount of \$118,503 as at March 31, 2001, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571, of \$118,503 as at March 31, 2001, plus investment earnings less the expenses relating to the wind up of the Plan, to Complete Packaging Limited.

DATED at Toronto, Ontario, this 22nd day of September, 2003.

Tom Galfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Donna Wolfe,
Cowan Wright Beauchamp Limited

IN THE MATTER OF the Pension Benefits Act R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, to the **Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303**, under section 80 of the Act;

AND IN THE MATTER OF A Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, under section 18(1)(d) of the Act.

TO: **Bowater Canadian Forest Products Inc.**
 1000 de la Gauchetiere West
 Suite 2820
 Montreal QC H3B 4W5

Attention: Claudine Morin-Massicotte
Administrator

ORDER

ON or about the 18th day of July, 2003, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposals (the "Notice of Proposals") to the Administrator of the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 wherein he proposed to:

1. REFUSE TO CONSENT TO the transfer of assets from the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest

Products Inc., Registration No. 355511 (the "Bowater Plan"), to the Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303 (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 80 of the Act (inadvertently referred to in the Notice of Proposals as section 81); and

2. REFUSE TO REGISTER an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

NOTICE requiring a hearing was not delivered to the Financial Services Tribunal by the Applicant or any other party within the time frame prescribed by subsection 89(6) of the Act.

THEREFORE the Superintendent:

1. REFUSES TO CONSENT to the transfer of assets from the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 (the "Bowater Plan"), to the Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303 (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 80 of the Act (inadvertently referred to in the Notice of Proposals as section 81); and



2. **REFUSES TO REGISTER** an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

DATED at Toronto, Ontario, this 3rd day of October, 2003.

Tom Gelfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526** to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 81(5) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526**, under section 18(1)(d) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 18(1)(d) of the Act.

TO:

Blue Circle Canada Inc.
c/o St. Marys Cement Inc.
55 Industrial St., 2nd floor
Toronto, ON M4G 3W9

Attention: Patricia Brundit,
Manager Human Resources
Services

Employer and Administrator

ORDER

ON or about July 18, 2003, the Superintendent of Financial Services ("Superintendent") issued a

Notice of Proposal to Refuse (the "Notice of Proposal") to Blue Circle Canada Inc., the Employer and Administrator, wherein he proposed to:

- 1. REFUSE TO CONSENT** to the transfer of assets referred to in the Report on the Actuarial Valuation for funding Purposes as of January 1, 1999, prepared by William M. Mercer Limited (the "Transfer Report") from the Pension Plan for the Salaried Employees of TCG Materials Limited, Registration Number 390526 (the "TCG Plan") to the Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies (formerly the Pension Plan for the Designated Employees of St. Marys Cement Corporation and Subsidiary Companies), Registration Number 530493 (the "Blue Circle Plan"), under section 81(5) of the Act;
- 2. REFUSE TO REGISTER** Amendment No. 1 to the TCG Plan effective December 31, 1998, attached to the Application for Registration of Pension Plan Amendment (the "TCG Amendment No. 1"), under section 18(1)(d) of the Act; and

- 3. REFUSE TO REGISTER** Amendment No. 4 to the Blue Circle Plan effective January 1, 1999, attached to the Application for Registration of Pension Plan Amendment (the "Blue Circle Amendment No. 4"), under section 18(1)(d) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with the Notice of Proposal.

THEREFORE THE SUPERINTENDENT:

- 1. REFUSES TO CONSENT** to the transfer of assets referred to in the Transfer Report from the TCG Plan to the Blue Circle Plan, under section 81(5) of the Act;



- 2. REFUSES TO REGISTER** the TCG Amendment No. 1, under section 18(1)(d) of the Act; and
- 3. REFUSES TO REGISTER** the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.

REASONS:

1. An application was made to the Superintendent for consent to a transfer of assets from the TCG Plan to the Blue Circle Plan as of January 1, 1999 (the "Asset Transfer"). As required by Financial Services Commission of Ontario Policy A700-251 the Transfer Report was filed with the Superintendent as part of the application for consent to the Asset Transfer.
2. The Transfer Report shows that the TCG Plan (which is the exporting Plan) has a solvency excess of \$637,800 as of January 1, 1999 and the Blue Circle Plan (which is the importing plan) has a solvency deficiency of \$6,802,700 as of January 1, 1999, before the Asset Transfer and will have a solvency deficiency of \$6,164,900 as at January 1, 1999, after the Asset Transfer.
3. Section 81(5) of the Act requires the Superintendent's consent to the Asset Transfer, whether section 81(1) or section 81(8) of the Act applies to that transfer. Section 81(5) provides that:

The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.
4. Section 11(a) of FSCO Policy A700-251 provides that:

The Superintendent may decide that the benefits are not protected where:
 - (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0;
5. The Transfer Report indicates that transfer ratio of the exporting Plan (the TCG Plan) prior to the Asset Transfer is 1.19 (after rounding) and the transfer ratio of the importing Plan (the Blue Circle Plan) is .93 (after rounding) both before and after the Asset Transfer. Therefore, the pension and other benefits of the members and former members of the exporting plan (the TCG Plan) are not protected in the Asset Transfer.
6. Therefore the Superintendent refuses to consent to the Asset Transfer from the TCG Plan to the Blue Circle Plan, under section 81(5) of the Act.
7. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the TCG Amendment No. 1 with the Superintendent.
8. TCG Amendment No. 1 provides that members shall cease accruing benefits under the TCG Plan effective December 31, 1998, shall commence accruing benefits under the Blue Circle Plan effective January 1, 1999 and the assets and liabilities shall be transferred from the TCG Plan to the Blue Circle Plan, subject to the prior approval of such transfers by the appropriate regulatory authorities (which would include the Superintendent). Upon the transfer of assets and liabilities, the TCG Plan shall be terminated. The TCG Plan, with the TCG Amendment No. 1 would cease to comply with the Act because

the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the TCG Amendment No 1 were consented to and registered respectively.

9. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the Blue Circle Amendment No. 4 with the Superintendent.
10. Blue Circle Amendment No. 4 provides that TCG Plan members shall commence accruing benefits under the Blue Circle Plan on terms identical to the TCG Plan up to June 30, 1999 and effective July 1, 1999 the TCG Plan members shall contribute and accrue benefits in accordance with the Blue Circle Plan; the Blue Circle Plan is amended to assume liabilities for all benefits accrued under the TCG Plan in respect of all active and non-active members of the TCG Plan; and the assets from the TCG Plan shall be transferred to the Blue Circle Plan after all regulatory approvals have been obtained. The Blue Circle Plan with the Blue Circle Amendment No. 4 would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the Blue Circle Amendment No. 4 were consented to and registered respectively.
11. Therefore the Superintendent refuses to register the TCG Amendment No. 1 and the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.

DATED at Toronto, Ontario, September 10, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services



Refusals to Consent to Applications for the Payment of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act R.S.O. 1990, c. P.8*, as amended (the "Act");

AND IN THE MATTER OF an Application under section 78(1) of the Act submitted by **Marks & Spencer Canada Inc.** in respect of the **Retirement Income Plan for Employees of Marks & Spencer Canada Inc.**, **Registration Number 387241**;

TO: **Marks & Spencer Canada Inc.**
 c/o Baker & McKenzie
 Barristers & Solicitors
 BCE Place, 181 Bay Street,
 Suite 2100
 P.O. Box 874
 Toronto, ON M5J 2T3

Attention: Mrs. Susan G. Seller

**Employer and Administrator
 of the Plan**

AND TO: **CAW Local 1000 of National Automobile, Aerospace, Transportation and General Workers Union of Canada (also known as Retail Wholesale Canada — CAW Division)**
 6800 Campobello Road
 Mississauga, ON L5N 2L8

Attention: Mr. Mike Langdon
Union

Registration Number 387241 (the "Plan"), under subsection 78(1) of the Act (the "Application").

NO REQUEST for Hearing was made to the Financial Services Tribunal in connection with the NOP to refuse to consent to the Application.

I THEREFORE REFUSE to consent to the Application.

DATED at North York, Ontario, June 26th, 2003.

K. David Gordon,
 Deputy Superintendent, Pensions

REFUSAL TO CONSENT TO APPLICATION

ON or about November 18, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Consent to Application (the "NOP") to Marks & Spencer Canada Inc. (the "Employer"), in respect of the Employer's application dated March 30, 2001, for the payment of surplus to the Employer on the wind up of the Retirement Income Plan for Employees of Marks & Spencer Canada Inc.,



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433 (the "Plan")**;

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Plan is registered under the Act as Registration Number 697433; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the

"Guarantee Fund") by the Act or the regulations made thereunder; and

3. On April 17, 2003, the Deputy Superintendent, Pensions, appointed The Standard Life Assurance Company Administrator of the Plan; and
4. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 74.3% of the full benefit to reflect the estimated funded ratio of the Plan; and
5. On July 18, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan with the understanding that the Administrator would make an application for such a Declaration; and
6. On August 5, 2003, the Administrator filed a wind up report for the Plan effective December 20, 2002; and
7. On August 26, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, with reference to the said wind up report, and
8. On this day September 19, 2003, the Superintendent of Financial Services issued an order to wind up the Plan effective December 20, 2002; and
9. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the notice of proposal to make the Declaration.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the Wind Up Funded Ratio of the Plan to be 74.3%.



2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be \$1,386,761.00.
3. The Employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Galfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Salaried Employees of Marsh Engineering Limited, Registration Number 276030;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney
Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake,
President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner
Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Revised Pension Plan for Salaried Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 276030; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. Administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them by appointing Morneau Sobeco as Administrator on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. The proposals for the distribution of the Plan's assets as set out in a wind up report filed by the appointed Plan Administrator, have been approved by staff on August 13, 2003, subject to any additional funding that may be required from the Guarantee Fund; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the Administrator on May 29, 2003; and
8. On July 2, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated June 27, 2003, to make a Declaration that the Guarantee Fund applies to the Plan; and



9. No request for a hearing by the Financial Services Tribunal in respect of the Notice of Proposal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 68.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is \$598,548.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.

DATED at Toronto, Ontario this 27th day of August, 2003.

Tom Gofetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441** (the "Plan");

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary
Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561
Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON MSC 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Plan is registered under the Act as Registration Number 697441; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On April 17, 2003, the Superintendent of Financial Services appointed The Standard Life Assurance Company Administrator of the Plan; and
4. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 75.5% of the full benefit to reflect the estimated funded ratio of the Plan; and
5. On July 18, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan with the understanding that the Administrator would make an application for such a Declaration; and
6. On August 5, 2003, the Administrator filed a wind up report for the Plan, effective December 20, 2002; and
7. On August 26, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, with reference to the said wind up report; and
8. On this day September 19, 2003, the Superintendent of Financial Services issued an order to wind up the Plan effective December 20, 2002; and
9. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the notice of proposal to make the Declaration.



NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the Wind Up Funded Ratio of the Plan to be 74.0%.
2. The claim against the Guarantee Fund as at the wind up date is estimated to be \$4,667,330.
3. The employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario this 19th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the *Pension Benefits Act*

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, Registration Number 384313**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney
Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake,
President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4433**
2601 Highway 20, East
Unit 7
Fonthill ON L0S 1E6

Attention: Bryan Adamczyk

Union Representative of the Plan members

DECLARATION

WHEREAS:

1. The Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, (the "Plan"), is registered under the Act as Registration Number 384313; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. Administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them with Morneau Sobeco on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. The proposals for the distribution of the Plan's assets as set out in a wind up report filed by the appointed plan Administrator, have been approved by staff on August 13, 2003, subject to any additional funding that may be required from the Guarantee Fund; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the appointed administrator on May 29, 2003; and



8. On July 2, 2003 the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated June 27, 2003, to make a Declaration that the Guarantee Fund applies to the Plan; and
9. No request for a hearing by the Financial Services Tribunal in respect of the Notice of Proposal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 63.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is \$1,248,965.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.

DATED at Toronto, Ontario this 27th day of August, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Allocation of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the
Superintendent of Financial Services to Make
a Declaration under Section 83 of the Act,
respecting the **Pension Plan for Hourly
Employees of Alumiprime Windows
Limited (the "Pension Plan"), Registration
Number 1021005;**

TO: Morneau Sobeco
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. David Kearney
**Administrator of the
Pension Plan**

ALLOCATION

WHEREAS on September 25, 2001, the
Director, Pension Plans Branch, declared, pursuant
to sections 83 and 89 of the Act, that
the Pension Benefits Guarantee Fund (the
"Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the
Guarantee Fund and pay to the Pension Plan,
pursuant to subsection 34(7) of R.R.O. 1990,
Reg. 909, under the Act (the "Regulation"), an
amount not to exceed \$395,400 which together
with the Ontario assets of the Pension Plan, will
provide for the benefits determined in accordance
with section 34 of the Regulation. Any
money allocated from the Guarantee Fund but
not required to provide such benefits shall be
returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 30th day of
July, 2003.

K. David Gordon,
Deputy Superintendent, Pension Division





FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
McNairn , Colin (Vice-Chair) O.C. 1623/2001 O.C. 1809/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
Corbett , Anne (Vice-Chair Acting) O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe , Kevin O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal , Shiraz Y.M. O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman , Louis O.C. 439/2002 O.C. 2527/98 O.C. 1592/98	January 23, 2002 December 9, 1998 June 17, 1998	January 22, 2005** December 8, 2001 December 16, 1998
Gavin , Heather O.C. 440/2002 O.C. 11/99	January 23, 2002 January 13, 1999	January 22, 2005** January 12, 2002
Litner , Paul W. O.C. 1512/2002	September 9, 2002	September 8, 2005
Moore , C.S. (Kit) O.C. 1625/2001 O.C. 1591/98	June 20, 2001 July 1, 1998	June 19, 2004** June 30, 2001
Short , David A. O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent , J. David O.C. 2119/2001	October 24, 2001	October 23, 2004**

**Or on the day FSCO/OSC merges, if earlier



Pension Hearings Before the Financial Services Tribunal

Imperial Oil Limited

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any commun-

cations to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions. The April 28, 2003 pre-hearing conference did not proceed at the request of the parties. On May



30, 2003, the parties asked that the matter continue to be adjourned *sine die* pending resolution of the issues in the proceeding.

Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205 and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties were unable to resolve the issues in this matter. At the pre-hearing conference on May 12, 2003, the parties stated they would contact the Registrar to resume the pre-hearing conference if they did not resolve the issues at a settlement meeting on May 26, 2003. On June 20, 2003, the parties advised that they expect the settlement discussions to continue.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003. At the hearing on July 14, 2003, the panel reserved its decision.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.



A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case?

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, are published in this bulletin on page 136.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an Order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of



expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

At a resumption of the pre-hearing conference on September 19, 2003, the parties agreed that the hearing will proceed on October 27, 28, 29, 2003, but only with respect to the giving of evidence by non-expert witnesses. The hearing will resume on January 7-9, 2004, for additional non-expert and expert witness testimony. On January 26-27, 2004, oral arguments will take place.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an Order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed that the hearing will proceed on March 2-5, 2004, but only with respect to the giving of evidence. On May 26-27, 2004, oral arguments will take place.



Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an Order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;

On November 12, 2002, George Polygenis requested a hearing regarding the Superintendent's Notice of Proposal dated October 11, 2002, to refuse to make an Order, under section 87(1) of the Act, that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan.

On November 26, 2002, an application for party status was filed by the Ontario Pension Board.

At a pre-hearing conference on January 27, 2003, full party status was granted to the Ontario Pension Board, and the parties agreed to a settlement conference. The settlement conference was held on February 10, 2003 and is to continue at some future date with the participation of Mr. Polygenis' employer as well as the expected parties.

It was determined at the pre-hearing conference that a preliminary motion will be heard to determine "What degree of deference should the Tribunal exercise in reviewing the decision of the Board denying the Applicant entitlement to a disability pension"? The motion was scheduled for March 26, 2003. On March 14, 2003, the parties agreed to adjourn the motion hearing date *sine die*.

On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.

Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an Order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.). At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada.

On May 12, 2003, a motion for disclosure brought by the Applicant was heard. The motion was dismissed.

The hearing was held on July 2, 2003, September 22, and 25, 2003, at which time the panel reserved its decision.

Ontario Teachers' Pension Plan Board, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0217-2003;

On February 25, 2003, the Ontario Teachers' Pension Plan Board requested a hearing regarding the Superintendent's Notice of Proposal dated January 8, 2003, to make an Order under sections 87(2)(a) and (c) of the Act, requiring the Administrator of the Plan to pay Ronald A. Wilson, a former member of the Plan, his pension in the form of a joint and survivor pension in accordance with section 44(1) of the *Pension Benefits Act*.

On March 20, 2003, an application for party status was filed by Jane Kalbfleisch-Wilson, the former spouse of Ronald A. Wilson. At the pre-hearing conference date on May 26, 2003, full party status was granted to Jane Kalbfleisch-Wilson.

On June 16, 2003, an application for party status was filed by Ronald A. Wilson. At a resumption of the pre-hearing conference on June 23, 2003, full party status was granted to Ronald A. Wilson.

The hearing was held on September 24, 2003. In its reasons dated October 14, 2003, the Tribunal directed the Superintendent, by order, to refrain from carrying out the Notice of Proposal. The Tribunal determined that the Board acted properly in determining that Mr. Wilson's pension need not be a joint and survivor pension, since Mr. Wilson was living separate and apart from his wife before February 29, 2000, the earliest possible due date for payment of the first installment of his pension. The Reasons for Decision dated October 14, 2003, are published in this bulletin on page 131.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.



The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an Order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up, in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an application for party status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. The motion hearing scheduled for September 22, 2003, was rescheduled to November 3, 2003, at the request of the parties. At the end of the hearing on the motion, the Tribunal made Orders framing the issues in the proceeding, establishing the requirements for giving notice of the main hearing and requiring disclosure by Unilever Canada Inc. and the Superintendent of certain material relevant to the issues in the proceeding. The pre-hearing conference is scheduled to be reconvened, after disclosure has been made, on March 8, 2004.

Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003;

On April 22, 2003, the Great Atlantic & Pacific Company of Canada, Limited, (the "Applicant") requested a hearing regarding the Superintendent's Notice of Proposal dated March 24, 2003, to refuse to consent to the application dated October 2, 2001, made by the Applicant, for payment out of the pension fund for the Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325 (the "Plan"), of an overpayment by the Applicant to the pension fund for the Plan. The overpayment arose as a result of the Applicant's funding of a deficit in the Plan on wind up, which proved to be more than ade-



quate to meet the deficit. The Superintendent maintains that the overpayment constitutes surplus in the Plan and can only be paid out to the Applicant in accordance with s.79 of the *Pension Benefits Act*.

On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.

Weavexx Corporation Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration Number 0264655, FST File Number P0227-2003;

On July 3, 2003, BTR Canada Finance Inc., (the "Applicant") requested a hearing regarding the Superintendent's Notice of Proposal dated May 30, 2003, to refuse to consent to the application dated September 22, 1999 submitted by Weavexx Corporation, for payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the *Pension Benefits Act*.

On September 12, 2003, an application for party status was filed by the Union of Needletrades, Industrial & Textile Employees — CLC.

On November 12, 2003, the Applicant withdrew the request for hearing. The pre-hearing conference scheduled for November 14, 2003, was subsequently cancelled.

Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003;

On October 7, 2003, Trustees of the Boilermakers' National Pension Plan (Canada) (the "Plan") requested a hearing regarding the Superintendent's Notice of Proposal dated

September 22, 2003. By the terms of the Notice of Proposal, the Superintendent proposes to;

- revoke or refuse to register certain amendments to the Plan which provide that a member is deemed not to be retired unless he or she has withdrawn from employment in the construction industry, or to reduce an early retirement benefit for a member who is re-employed by an employer not participating in the Plan, on the grounds that these amendments impose additional requirements for, or restrictions on the continued receipt of, early retirement benefits in breach of s. 40(2) of the *Pension Benefits Act* (the "Act");
- direct the trustees of the Plan to cease requiring members who are retiring early to confirm that they will cease working in the boilermaker industry, on the grounds that no such requirement is set out in the Plan; and
- refuse registration of a Plan amendment that would allow a Plan member to terminate membership in the Plan if contributions were not made on his or her behalf by a participating employer but only if the member withdraws from employment in the construction industry, on the grounds that this qualification would add a further condition to the right to terminate membership in contravention of s. 38(1) of the Act.

A pre-hearing conference is scheduled for December 8, 2003.

Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003

On November 6, 2003, the Board of Trustees of Plumbers Local 463 Pension Plan Trust Fund requested a hearing regarding an Order dated October 6, 2003 of the Deputy Superintendent, Pensions, to make an Order under subsection 106(13) of the *Pension Benefits Act*. In his Order,



the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of the reports prepared following the examination, investigation or inquiry referred to in paragraph (a) of the Order.

The pre-hearing conference date is pending.

The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
Matter continues to be adjourned *sine die* pending the outcome of the Monsanto case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;**
Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**

At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the Monsanto case.

- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
Matter was adjourned *sine die* pending the outcome of the Monsanto case.

- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**

At the request of the parties, this matter was adjourned *sine die* pending the outcome of the Monsanto case.

- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**

The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the Monsanto case.

- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**

On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**



The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.

- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**

At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.



Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0225-2003	To Refuse to Consent dated May 15, 2003	Reasons For Decision dated July 17, 2003
U0226-2003	To Refuse to Consent dated May 27, 2003	Reasons For Decision dated July 14, 2003

Decisions to be Published

- U0225-2003
U0226-2003
Ontario Teachers' Pension Plan Board (Wilson)
Marcel Brousseau



Financial Services Tribunal Decisions with Reasons

INDEX NO.:

FST File Number U0226-2003

DATE OF DECISION:

July 14, 2003

PUBLISHED:

Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated May 27, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated May 27, 2003, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superin-

tendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the current application (the "April 2003 Application", subsequently amended), which was made on the basis of low income, was within 12 months after the date of another successful application (the "November 2002 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

89. -(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the April 21, 2003 Application.

4. The November 2002 Application was signed by the Applicant on November 19, 2002. On December 23, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the November 2002 Application was a successful application.

5. On April 21, 2003, the Applicant signed the Current Application, in which he applied to withdraw funds from his locked-in account



on the basis of low income. As this application was made within 12 months after the successful November 2002 Application (made on the basis of low income), the April 2003 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked — in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the April 2003 Application cannot be granted because it fails to meet the time requirement in the Regulation.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated May 27, 2003, in respect of the April 2003 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 27, 2003, directed to the Applicant.

DATED at Toronto, this 14th day of July, 2003.

Mr. J. P. Martin,
Member, Financial Services Tribunal

INDEX NO.:

FST File Number U0225-2003

DATE OF DECISION:

July 17, 2003

PUBLISHED:

Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated May 15, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated May 15, 2003, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of

such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was signed on April 9, 2003 and was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application"), which was signed on March 7, 2003 and was also made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

89.-(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Superintendent has stated that the Applicant signed the Previous Application on March 7, 2003 resulting in the Superintendent's consent to the withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. The Applicant has not refuted this statement by the Superintendent, nor has he referred to the Previous Application in the Current Application. We conclude that the Previous Application was successful.



5. On April 9, 2003, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal has no authority to direct the Superintendent to allow an application from a locked-in account that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Tribunal affirms the Superintendent's Notice to Propose to Refuse to Consent dated May 15, 2003, regarding the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 15, 2003, directed to the Applicant.

DATED at Toronto, this 17th day of July, 2003.

Mr. Kit Moore,
Member, Financial Services Tribunal

INDEX NO.:	FST File Number P0127-2003
PLAN:	Ontario Teachers' Pension Plan, Registration No. 0345785 (the "Plan")
DATE OF DECISION:	October 14, 2003
PUBLISHED:	Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 87(2) of the Act relating to the Ontario Teachers' Pension Plan, Registration No. 0345785 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

**ONTARIO TEACHERS' PENSION PLAN
BOARD**

Applicant

-and-

**SUPERINTENDENT OF FINANCIAL
SERVICES**

Respondent

-and-

**JANE KALBFLEISCH-WILSON and
RONALD WILSON**

Additional Parties

BEFORE:

Colin H.H. McNairn,
Vice Chair of the Tribunal and
Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

David A. Short,
Member of the Tribunal and of the Panel

APPEARANCES:

**For the Ontario Teachers' Pension Plan
Board:**

Lawrence E. Ritchie

Anna Zalewski

For the Superintendent:

Deborah McPhail

For Jane Kalbfleisch-Wilson:

Ari Kaplan

For Ronald Wilson:

Timothy F. Deeth

REASONS FOR DECISION

Facts

The Ontario Teachers' Pension Plan Board (the "Board") is the administrator of the Ontario Teachers' Pension Plan (the "Plan"), a pension plan for Ontario teachers that is registered under the *Pension Benefits Act* (the "Act").

Mr. Ronald Wilson ("Mr. Wilson") commenced membership in the Plan in 1969. He ceased employment as a teacher on January 31, 2000,



at which time he was entitled to receive an immediate and unreduced special early retirement pension under the terms of the Plan. Mr. Wilson completed an application for the pension to which he was entitled under date of February 7, 2000, requesting that his pension commence on February 1, 2000. That application was received by the Board on February 21, 2000.

Mr. Wilson and Ms. Jane Kalbfleisch-Wilson ("Mrs. Wilson") were married on March 21, 1970. They began living separate and apart on February 7 or 8, 2000.

The Board made the first payment to Mr. Wilson in respect of his pension on April 28, 2000. That payment related to the month of April. On May 10, the Board made a second payment to Mr. Wilson in respect of his pension — for the months of February and March of 2000. That payment included interest on the February pension amount calculated from February 29, 2000 and on the March pension amount calculated from March 31, 2000.

The pension that was paid to Mr. Wilson was not in the form of a joint and survivor pension, which would provide a continuing, although reduced, pension to Mrs. Wilson should she outlive Mr. Wilson.

By notice of proposal dated January 8, 2003 (the "Notice of Proposal"), the Superintendent of Financial Services (the "Superintendent") proposed to make an order under subsection 87(2) of the Act requiring the Board, as administrator of the Plan, to pay Mr. Wilson his pension in the form of a joint and survivor pension in accordance with subsection 44(1) of the Act. On February 25, 2003, the Board made a request for a hearing by this Tribunal in respect of that proposal. At a pre-hearing conference, Mr. Wilson

and Mrs. Wilson were added, on separate applications, as parties to this proceeding, joining the Board and the Superintendent in that role.

Positions of the Parties

The Board has taken the position that Mr. and Mrs. Wilson were living separate and apart on the date that payment of the first instalment of Mr. Wilson's pension was due. In those circumstances, subsection 44(4)(b) of the Act provides an exception from the requirement, in subsection 44(1), that a pension paid to a member of a pension plan who has a spouse shall be a joint and survivor pension. The Board argued before the Tribunal that the earliest date by which payment of the first instalment of Mr. Wilson's pension could be said to be due was February 21, 2000, when the Board received Mr. Wilson's application to commence his pension and the actual due date, if it had to be determined, would be April 30, 2000 as Mr. Wilson's application was not complete until March, 2000.

The Superintendent maintained before the Tribunal that the Act equates the due date for payment of the first instalment of a pension with the member's entitlement to the pension, which in the present case was February 1, 2000, and nothing in the Plan can prevail over this minimum standard evidenced by the Act.

Mrs. Wilson took the same position but put arguments forward in support that differed from those of the Superintendent.

Mr. Wilson did not make any arguments to the Tribunal, preferring to assume the role of observer in the hearing even though entitled, as a party, to make representations.

Relevant Provisions of the Act and the Plan

Subsections 44(1) to (4) of the Act are to the following effect:

44. (1) Every pension paid under a pension plan to a former member who has a spouse or a same-sex partner on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.

(2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the former member.

(3) The amount of the pension payable to the survivor of the former member and the spouse or same-sex partner of the former member shall not be less than 60 per cent of the pension paid to the former member during the joint lives of the former member and his or her spouse or same-sex partner.

(4) Subsections (1) to (3) do not apply,

(a) in respect of a pension benefit if payment of the pension has commenced before the 1st of January, 1988; or

in respect of a former member who is living separate from his or her spouse or same-sex partner on the date the payment of the first instalment of the pension is due.

.....

The Plan provides in section 48 as follows:

48. (1) The administrator shall begin payment of a member's retirement pension not later than the later of,

(a) the month following the month in which the member ceases to be employed in education, or

(b) the month following the month in which application for the pension is complete.

(2) The administrator shall pay a retirement pension in monthly instalments on the last day of the month.

(3) The administrator shall pay interest on late payments.

Analysis

The term "pension", which is used in subsections 44(1) and 44(4)(b) of the Act, is defined (in section 1 of the Act) as meaning a "pension benefit that is in payment". A "pension benefit" is defined, in turn, as meaning the aggregate amounts payable to a member to which the member will become entitled under a pension plan. Given the use of the term "pension", rather than "pension benefit", the clause "date that the payment of the first instalment of the pension is due", in subsections 44(1) and 44(4)(b), must refer to a pension that is already in the payment phase. Therefore, the due date for payment of the first instalment of a "pension" must logically follow a "pension benefit" coming into payment although it could, of course, come immediately thereafter.

Other provisions of the Act that turn on the time of commencement of payment of a pension or pension benefit use different wording from that in section 44, for example;

subsection 45(1) — "before commencing payment of a pension or pension benefit"

subsection 46(2) — "within 12 months preceding commencement of payment of the pension benefit"

subsection 46(3) — "before commencement of payment of the pension benefit"



- subsection 48(1) — “before commencement of payment of the deferred benefit” (a “deferred benefit” means a pension benefit that is deferred until the normal retirement date; see section 1 of the Act)
- subsection 51(1) — “the date on which payment of the pension benefit commences”

These provisions would all seem to relate to the time that a pension benefit becomes a pension, i.e. the effective date of a pension in pay. If subsections 44(1) and 44(4)(b) were meant to key off that date, we would expect to see language similar to that in these other provisions of the Act. But the subsections of section 44 refer to the “due” date for “payment of the first instalment of the pension”. On a plain reading, this would indicate that the date in question represents the time at which there is an obligation to start the actual payment stream in respect of a pension benefit that has matured into a pension.

Subsection 41(5) of the Act allows a member of a pension plan who is entitled to a deferred pension and is within 10 years of reaching normal retirement age (the position of Mr. Wilson in this case) to make an election requiring that payment of an early retirement pension commence at the time of termination of employment (or at any time thereafter that is at or before the normal retirement date). We think that this election is simply to determine the commencement of the in-pay phase of the pension and is not meant to allow the member to fix the due date for the payment of the first instalment of the pension, as suggested by Mrs. Wilson.

We conclude that the date at which payment of the first instalment of a pension is due, in the sense of subsections 44(1) and 44(4)(b), should not be equated with the commencement date of the pension. But that does not resolve the question that we have to decide in this case, which is whether Mr. and Mrs. Wilson were living separate and apart by the due date for payment of the first instalment of Mr. Wilson’s pension. The Act does not elaborate on how that due date is to be determined.

Since the Act does not, itself, provide a method for fixing the due date for payment of the first instalment of Mr. Wilson’s pension, we must then consider the terms of the Plan in this regard. Subsection 48(2) of the Plan tells us that the due date for that payment cannot be earlier than February 29, 2000 because all monthly instalments of a pension provided for by the Plan are payable in arrears at the end of the month and Mr. Wilson’s pension did not start until February 1, 2000, the date he elected for commencement of the pension.

As there is nothing in the Act that is inconsistent with payment of monthly instalments of a pension in arrears, effect must be given to subsection 48(2) of the Plan. Consequently, it informs the meaning of the phrase “date that payment of the first instalment of the pension is due” in subsections 44(1) and 44(4)(b) of the Act as applied to Mr. Wilson’s early retirement pension.

Since Mr. Wilson was living separate and apart from his wife before February 29, 2000, the earliest possible due date for payment of the first instalment of his pension, subsection 44(4)(b) of the Act applies, with the result that the pension is not required to be a joint and survivor pension. Accordingly, the Board acted properly in determining the form of pension to be paid

to Mr. Wilson. In the circumstances, it is not necessary for us to decide the precise date at which payment of the first instalment of Mr. Wilson's pension came due.

We are not aware of any considerations relating to the policy or underlying aims of the Act that militate against our conclusion as to the earliest possible due date for payment of the first instalment of Mr. Wilson's pension. Generally speaking, any hardship to either spouse on a marriage breakdown that may be caused by one spouse failing to receive a joint and survivor pension or receiving such a pension can, of course, be redressed through the property division regime that applies on such a breakdown.

At the pre-hearing, the parties identified a second issue to be considered in this case, that is whether the Tribunal has the authority to determine the status of the pension payments that Mr. Wilson has already received and, if so, what relief ought to be directed in that regard.

However, the parties recognized that this was a "live issue" only if the Tribunal were to conclude that Mr. Wilson should receive a joint and survivor pension. Accordingly, they reserved their arguments on this issue pending such a conclusion. It follows from our decision that it is not necessary to hear those arguments and address that issue.

DISPOSITION

In light of our conclusions in this matter, we direct the Superintendent, by order, to refrain from carrying out the proposal contained in the Notice of Proposal.

DATED at Toronto, this 14th day of October, 2003.

Colin H.H. McNairn,
Chair of the Panel

Louis Erlichman,
Member of the Panel

David A. Short,
Member of the Panel

**INDEX NO.:**

FST File Number P0183-2002

PLAN:Electrical Industry of Ottawa Pension Plan Ontario,
Registration No. 0586396 (the "Plan")**DATE OF DECISION:**

October 27, 2003

PUBLISHED:

Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, Chapter P. 8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, Chapter 28 (PBA) (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Make an Order Under Section 87 of the Act Respecting a Request by Mr. Marcel Brousseau Relating to the Electrical Industry of Ottawa Pension Plan Ontario, Registration No. 0586396 (the "Plan");

AND IN THE MATTER OF a Hearing in Accordance with Subsection 89(8) of the Act.

BETWEEN:**MARCEL BROUSSEAU****Applicant**

- and -

SUPERINTENDENT OF FINANCIAL SERVICES**Respondent****BEFORE:**

Ms. Anne Corbett,
Vice Chair of the Tribunal
and Chair of the Panel

Ms. Heather Gavin,
Member of the Tribunal and of the Panel

Mr. David Vincent,
Member of the Tribunal and of the Panel

APPEARANCES:

Mr. Marcel Brousseau,
appearing on his own behalf

For the Superintendent of Financial Services:

Mr. Mark Bailey

HEARING DATE: November 29, 2002

MAJORITY REASONS FOR DECISION**Background**

Mr. Brousseau is a member of the Electrical Industry of Ottawa Pension Plan (the "Plan"). This hearing results from a motion brought by the Superintendent in connection with a Notice of Proposal issued by the Superintendent on January 22, 2002 to refuse to make an Order that Mr. Brousseau receive credit for continuous service in the Plan for the period between November 1983 and August 1985.

The Plan is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Trustees"). The Plan covers members of the International Brotherhood of Electrical Workers, Local 586 ("IBEW, Local 586").

Mr. Brousseau originally wrote to the Pension Commission of Ontario in June 1998 with respect to his entitlement to credit for continuous service for the period from November 1983 to August 1985.

Mr. Brosseau had previously written to the plan administrator, Coughlin and Associates Limited with respect to his entitlement for credited service for the relevant period. That request was forwarded to the Trustees and by letter dated June 5, 1998 Mr. Brosseau was advised by Coughlin and Associates that the Trustees had concluded that the break in service from November 1, 1983 to August 31, 1985 was valid and that credits would not be granted for that period.

In February 2001 the Financial Services Commission of Ontario wrote to Mr. Brosseau informing him that they had concluded that the decision of the Trustees that Mr. Brosseau's pensionable service had been broken as a result of employment with a non-participating employer during the period November 1, 1983 to August 1985 was not in contravention of the requirements of the *Pension Benefits Act* and that the Trustees had not contravened the Act in exercising their discretion under the plan.

On August 31, 2001, the Trustees filed an Application in the Ontario Superior Court of Justice asking for the opinion, advice and direction of the Court whether the Trust Agreements and Pension Plan texts for the Plan should be interpreted to give members of the Plan "credited service" under the Plan for the periods before January 1, 1994 when they were not working for participating employers under the Plan for a continuous period of two years or more, or for a period of less than two years.

The parties to the Court Application were the Trustees, as applicants and Nelson Cybulski in his personal capacity and in his representative capacity as the Treasurer of the International Brotherhood of Electrical Workers Union Local 586, Electrical Contractors Association of Ottawa and the Superintendent of Financial Services as respondents.

The Court ordered that Notice of the Application be sent to all retired and non-retired plan members by express post mail and for those non-retired members whose addresses were unknown notice would be given by publication in newspaper advertisements published in the Ottawa Citizen, the National Post and Le Droit. The Application was heard by the Court on November 7, 2001 and the Court's decision was released November 19, 2001 (the "Court Decision").

The Court found that the Trustees had established the practice prior to 1994 of giving plan members, whose employment by a participating employer was terminated, pension credits for a period of ninety (90) days following termination. If after ninety (90) days the members were still not working for a participating employer, the Trustees considered whether the member was "ready, willing and able" to work in the electrical industry and if so, exercise their discretion whether to continue to give the members credited service based on the individual circumstances in each case.

The respondent to the Court application and a number of plan members argued that the interpretation by the Trustees as to credited service did not conform with the wording of the Plan documents and argued that the restriction (that a member be "ready, willing and able to work in the electrical industry") was not justified and that credited service between the years 1974 to 1994 was not restricted. The Court identified the issue before it as follows:

... this Court is asked to determine if the Trustees have properly interpreted the Plan documents, and adequately exercised their discretion. Alternatively, should the Plan documents be interpreted as to give members of the Plan credited service under the Plan for all periods before January 1, 1994



when they had a break in service and were not working for a participating employers under the Plan?

The Court rejected the position taken by the respondents to the Court application and concluded that the interpretation and practice of the Trustees from 1974 to 1994 was the correct one.

Mr. Brosseau wrote to the Financial Services Commission in October 2001 with respect to his pension credits prior to 1985. In response to that letter the Deputy Superintendent issued a Notice of Proposal to issue an Order dated January 22, 2002 that the Trustees, in refusing to give Mr. Brosseau credited service during the lay off period from November 1983 to August 1985, had interpreted the Plan in compliance with the requirement of the *Pension Benefits Act*, the Regulations thereunder and the 1985 Plan text and 1987 Declaration of Trust.

At a prehearing conference the Superintendent raised the issue of the Tribunal's jurisdiction to hold a hearing with respect to this matter and the parties agreed that a preliminary motion would be heard by the full panel with respect to the Tribunal's jurisdiction to proceed with a hearing given the November 19, 2001 decision of the Superior Court of Justice as referred to above.

Analysis

The Superintendent argues that the Tribunal does not have jurisdiction to hear this matter because the issue that is the subject of Mr. Brosseau's request for a hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argues that the doctrine of issue estoppel applies to this matter and precludes the Tribunal from holding a hearing. The Superintendent submits that the doctrine of issue estoppel requires that

a Court or administrative tribunal should not adjudicate or hear a matter if another Court or administrative tribunal has already made a decision on the same point.

Issue estoppel is a common law doctrine. It applies to both Courts and administrative tribunals and prevents the litigation of a matter that has previously been the subject to a hearing by a Court or administrative tribunal. The doctrine of issue estoppel serves a public policy purpose that is often expressed as a twofold purpose, firstly that there be finality to litigation. The second aspect of the public policy purpose of issue estoppel serves the interest of justice between two parties – that a party should not be subject to multiple litigation with respect to the same issue.

There are however three requirements or pre-conditions that must be satisfied before a Court or an administrative tribunal may apply the doctrine of issue estoppel.

The Canadian Courts have consistently defined the requirements of issue estoppel as follows:

1. The same issue or question has been decided;
2. The judicial decision with respect to the issue is final; and
3. The parties to the initial judicial decision or their privies were the same persons as the parties or their privies to the subsequent proceedings in which the estoppel is raised.

Angle v. M.N.R. (1974), 17 O.R. (3d) 267, 112 D.L.R. 4th 683 (C.A.); *Minott v. O'Shanter Development Co.* (1999) 168, D.L.R. (4th) 270 (Ont. C.A.); *Danyluk v. Ainsworth Technologies Inc. et al* (2001) 201 D.L.R. (4th) 193 (S.C.C.).

Even where all three of the pre-conditions or requirements are satisfied, a Court or administrative tribunal retains the discretion to deter-



mine not to apply issue estoppel when to do so would cause unfairness or work an injustice.

(Minott v. O'Shanter Development Co., supra).

The exercise of discretion to refuse to give effect to issue estoppel only arises if the three pre-conditions have been satisfied.

We now turn to the application of the three requirements to the facts of this case.

1. Is The Issue That Was Before The Court The Same Issue To Be Considered By The Financial Services Tribunal?

Issue estoppel applies to issues of fact or of law or of mixed fact and law (*Danyluk v. Ainsworth Technologies Inc. et al, supra*).

The issue being considered in the subsequent litigation (in this case the issue coming before the Financial Services Tribunal) must have also been an issue decided in the earlier proceeding (ie: the Court proceeding held in November 2001). It is however not enough that the same issue be considered in both proceedings. The issue must be so fundamental to the earlier decision as to be essential to that decision. In *Minott v. O'Shanter Development Co. supra*, Laskin J.A. wrote at page 279:

Issue estoppel first requires the issue in the subsequent litigation be the same as the issue decided in the previous litigation and that "its determination must have been necessary to the result in the litigation" [Holmsted and Watson, Ontario Civil Procedure, loose leaf, Volume II at 21 213[1]]. In other words, issue estoppel covers fundamental issues determined in the first proceeding, issues that were essential to the decisions. Issue estoppel applies to issues of fact or of law or of mixed fact and law.

In this case, the issue before the Court involved the Trustee's proper interpretation of the Plan documents and exercise of their discretion. In

the decision, the issue before the Court is set out as follows:

Basically, this Court is asked to determine if the Trustees have properly interpreted the Plan documents, and adequately exercised their discretion. Alternatively, should the Plan documents be interpreted as to give members of the Plan credited service under the Plan for all periods before January 1, 1994 when they had a break in service and were not working for a participating employer[s] (sic) under the Plan?

In our opinion, the question to be decided in these proceedings is in part, but not in its entirety, the question that was decided in the earlier proceedings before the Court.

The question to be decided in this proceeding relates to Mr. Brousseau's entitlement to benefits under the Plan. That is a question of mixed fact and law. There has been no determination in the earlier proceedings of the facts that will be in issue with respect to Mr. Brousseau's entitlement.

To the extent the question in issue in these proceedings relates to the interpretation of the Plan by the Trustees it could be argued that the first condition required to determine that the doctrine of issue estoppel applies is satisfied. We do not think, however, that it is necessary to apply the doctrine of issue estoppel in order to find that the Applicant is subject to the earlier proceeding with respect to the issue of Plan interpretation. A judicial decision on a point of law by an Ontario Court creates a precedent.

Accordingly, to the extent the Court's decision is applicable to the facts of Mr. Brousseau's case, it is open to the Superintendent to argue that the Court Decision is to be followed by the Tribunal when it holds the hearing with respect to this issue.



Given our finding with respect to the first requirement it is not necessary for us to determine if the second or third requirement has been met. We will however set out our analysis with respect to these two requirements.

2. Was The Judicial Decision Final?

The Superintendent submits and we accept that the second requirement, that the judicial decision which is said to create the estoppel be final, has been met.

Where the decision that gives rise to the argument that issue estoppel should apply has been made by an administrative authority there will be a number of factors that must be considered in determining if a decision is a "judicial" decision. Those factors were set by Binnie, J. in *Danyluk v. Ainsworth Technologies Inc. et al*, supra (at p. 210) as follows:

First is to examine the nature of the administrative authority issuing the decision. Is it an institution that is capable of receiving and exercising adjudicative authority?

Secondly, as a matter of law, is the particular decision one that is required to be made in a judicial manner? Third as a mixed question of law and fact, was the decision made in a judicial manner? These are distinct requirements.

An examination of these elements does not arise where, as here, the decision that gives rise to the argument that issue estoppel applies is the final decision of a Court.

We are satisfied that the second requirement is met.

3. Were The Parties The Same?

The third condition required to be satisfied before the doctrine of issue estoppel applies is the requirement that parties to the first proceeding be the same as the parties to the second proceeding.

Mr. Brousseau was not a party to the Court proceeding. In order for the third requirement to be met we must conclude that Mr. Brousseau was a "privy."

A person who is not a party but who has a right to participate and declines to participate can be subject to the legal doctrine of issue estoppel in the latter proceeding if the individual is found to have been a "privy" to the first proceeding. In order for there to be a privy of interest there must be a sufficient degree of identification between the party and the privy.

A review of the case law is not helpful in determining the degree of interest which is required to create privity.

Counsel for the Superintendent argued that Mr. Brousseau was a privy to the parties in the Court proceeding on that basis that:

1. Mr. Brousseau received notice of the Court proceeding.
2. He had an opportunity to be a party.
3. A number of Plan members were granted leave to intervene and were added as respondents in the Court application.
4. The respondents in the Court application included the Treasurer of International Brotherhood of Electrical Workers Union Local 586, Electrical Contractors Association of Ottawa in a representative capacity who was represented by counsel.
5. The respondents appeared before the Court and argued for alternative interpretation of the Plan.
6. Mr. Brosseau was aligned in interest with the respondents to the Court proceeding.



It is our view that there is some degree of identification between the respondent in the Court proceeding and Mr. Brosseau with respect to the issue of plan interpretation that was before the Court and is part of the issue to be considered by the Financial Services Tribunal in this case. Given our finding with respect to the first requirement, the degree of identification is not sufficient to make him a privy. Accordingly, the third requirement of issue estoppel is not met.

Exercise of Discretion

Even if we had reached the conclusion that the three requirements to establish issue estoppel had been met on all issues to come before the Financial Services Tribunal in connection with this proceeding, we are of the view that this case is an appropriate one for the exercise of the retained discretion to refuse to apply issue estoppel.

Mr. Brousseau has presented his facts to the Superintendent and has received a Notice of Proposal to issue an Order. As required by the Act, the Notice states that Mr. Brosseau is entitled to a hearing by the Tribunal.

The subject matter of the hearing in this case involves the personal circumstances of Mr. Brosseau and the correct interpretation of the Plan by the Trustees. The issue of Plan interpretation has been determined by the Court but the applicability of that interpretation to Mr. Brosseau's circumstances was not the subject of the Court application. Mr. Brosseau is entitled to a hearing with respect to his personal circumstances.

The application of the doctrine of issue estoppel involves balancing the public policy considerations that litigation be final and that parties not be subjected to multiple proceedings with the rights of a litigant to be heard. *In Minott v. O'Shanter Development Co.,* supra, Laskin J.A. wrote (at page 228-289):

Issue estoppel is a rule of public policy and, as a rule of public policy, it seeks to balance the public interest in the finality of litigation with the private interest in achieving justice between litigants. Sometimes these two interests will be in conflict, or at least there will be tension between them. Judicial discretion is required to achieve practical justice without undermining the principles on which issue estoppel is founded. Issue estoppel should be applied flexibly where an unyielding application of it would be unfair to a party who is precluded from re-litigating an issue.

We have considered the rights of the Trustees and in particular their right to not be subjected to multiple proceedings. We have balanced that right against the right of Mr. Brosseau to litigate his entitlement under the Plan. Having considered these competing interests we are of the view that, even if the doctrine of issue estoppel were to apply, it is appropriate in this case to exercise our discretion to not apply it and to proceed with a hearing on the merits.

DISPOSITION

Issue estoppel does not apply to prevent the Tribunal from holding a hearing on this matter. The parties should contact the Registrar to schedule dates for the hearing.

DATED at Toronto this 27th day of October, 2003.

Anne Corbett,
Chair of the Panel
Heather Gavin,
Member of the Panel



MINORITY REASONS

I have had the benefit of reading the reasons of the majority for which I am grateful. While I am sympathetic to Mr. Brosseau's circumstances, I have decided to dissent from the conclusion reached by my colleagues and I support the Superintendent's decision to refuse to make an order that Mr. Brosseau receive credit for service in the Plan for the relevant period.

On the question of issue estoppel, the reasons given in the Court Decision suggest the specific facts in Mr. Brosseau's case were known to the Court. In paragraph 12 of the reasons of the Court Decision, there is reference to the fact that one plan member raised the issue that was the cause of the application with the Financial Services Commission of Ontario. That member was Mr. Brosseau, which suggests that the Court was aware of the specific facts in Mr. Brosseau's case.

We were also provided with a copy of an affidavit sworn by Mr. Brosseau on November 2, 2001, five days prior to the Court application. I understand this affidavit was prepared with the assistance of the independent legal counsel appointed to represent members with an interest in the outcome of the application including Mr. Brosseau. The affidavit is some six pages in length and describes in some detail the facts surrounding Mr. Brosseau's break in service.

Unfortunately, the submissions made to the Tribunal by the counsel for the Superintendent of Financial Services do not address whether Mr. Brosseau's November 2, 2001 affidavit was actually filed with the Court prior to the application being heard. No clear evidence was produced on this point during oral argument before the Tribunal. Nonetheless, it seems reasonable to presume that Mr. Brosseau's affidavit was before the Court, given the proximity of the date it was sworn to the date of the Court application and given it was prepared with the assistance of the independent legal counsel appointed to represent members in the Court application. Even if the affidavit was not filed, in my opinion it is reasonable to infer from the Court Decision that the facts of Mr. Brosseau's case were before the Court. Cognizant of those facts, the Court ruled that the Trustees had exercised their discretion fairly. It is not open to this Tribunal, nor would it be appropriate, to question that result.

For all of the above reasons, I would support the Superintendent's position and rule that the Tribunal has no jurisdiction to hear this matter.

DATED at Toronto, this 27th day of October, 2003.

David Vincent,
Member of the Panel

PLACE
STAMP
HERE

The Editor, *Pension Bulletin*
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
Box 85
North York, ON
M2N 6L9



All publications provided by the Financial Services Commission of Ontario (FSCO) in written or electronic formats have been prepared by FSCO to provide general information about pension matters to the public.

Information in this Bulletin or any FSCO publication is provided by FSCO upon the express understanding that neither FSCO nor any member of the staff of FSCO is providing legal, actuarial, accounting or other professional advice or services whatsoever with respect to the material contained in this Bulletin or any FSCO publication. FSCO and staff of FSCO are not responsible for any action, costs, damages or liability arising from the use of any information contained in FSCO publications nor in respect of the consequences of anything done or omitted to be done by any person in reliance upon the whole or any part of the contents of this Bulletin or any FSCO product.

The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

This material is owned by the Government of Ontario and protected by copyright law. It may not be reproduced or redistributed for commercial purposes without the prior written permission of the Queen's Printer for Ontario.

If it is reproduced or redistributed for non-commercial purposes, Crown copyright is to be acknowledged.

PERMISSION

To request permission to reproduce all or part of this material for commercial purposes, please contact the Queen's Printer's representative:

Senior Copyright Analyst

Publications Ontario

(416) 326-5153

E-mail: copyright@gov.on.ca

© Queen's Printer for Ontario, 2004

ISBN 1481-6148

Ce document est disponible en français

GENERAL ANNOUNCEMENTS

Revised Annual Information Return Fee Structure

For the first time in over ten years, the fee payable by a pension plan administrator filing an Annual Information Return (AIR) has been increased.

The new fee structure applies to pension plans that provide only defined contribution benefits with an AIR filing due date on or after June 30, 2004, and to all other plans with an AIR filing due date on or after September 30, 2004. Effectively, the new fee structure applies to all plans with a plan year ending December 31, 2003, or later.

Under the new fee structure, the minimum fee per plan has been raised from \$200 to \$250, and the maximum fee per plan has been raised from \$50,000 to \$75,000. The fee per active member will remain unchanged at \$6.15 per member, but a separate fee for former members and other plan beneficiaries at \$4.15 per such person has been implemented.

The new fee structure enables FSCO to fully cover the costs associated with pension regulation, more equitably distributes the cost of providing regulatory services among plans registered with FSCO and ensures that a high quality of service continues to be provided by the Pension Division.





Applications for Transfer of Assets on Sale or Merger

On December 8, 2003, the Ontario Court of Appeal released its decision in *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* On February 6, 2004, ING Canada filed an application for leave to appeal the decision of the Ontario Court of Appeal to the Supreme Court of Canada.

The decision of the Ontario Court of Appeal raises questions about the authority of plan sponsors to transfer assets between pension plans where one or more of the pension plans is subject to a trust, and casts doubt on the authority of the Superintendent of Financial Services to consent to such transfers.

Until the Supreme Court of Canada has finally disposed of this case, the Superintendent will be treating the Court of Appeal's decision as binding. Consequently, the Superintendent has taken the position that consent to a transfer of assets on sale or merger will be considered if:

- the applicant can demonstrate that none of the pension plans involved is subject to a trust; or
- the applicant can demonstrate that all of the pension plans involved are defined contribution plans with no defined benefit liabilities of any kind.

In addition, the Superintendent will consider applications for the transfer of assets if the applicant can demonstrate that the *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* decision does not otherwise apply to the application.

Please note that all pension plans must continue to be fully administered in accordance with the *Pension Benefits Act*, R.S.O. 1990, and Regulation 909, R.R.O. 1990, as amended, without consideration of any potential transfer of assets or merger.



COURT/PROSECUTION MATTERS

The information set out below is current to April 15, 2004.

Court Matters

I. Monsanto

The Court of Appeal held that subsection 70(6) of the *Pensions Benefits Act* requires a distribution of surplus assets on partial wind up. On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management to appeal the Court of Appeal's decision. Five parties were granted intervener status in the appeal: National Trust Company; a group of former members of the National Trust Plan; one former member of the Monsanto Plan; the federal Ministry of the Attorney General representing the Office of the Superintendent of Financial Institutions; Nicole Lacroix, representing a group that has started a class action over pension surplus against Canada Mortgage & Housing Corporation; and the Canadian Labour Congress/Ontario Federation of Labour. The appeal was heard on February 16, 2004. The Court reserved its decision.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the *Pension Benefits Act*. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the pur-

poses of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded \$40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals were heard in the Court of Appeal on November 10, 2003. The Court released its decision on February 10, 2004, holding that Ms. Stairs was entitled to pre-retirement death benefits for both the pre-1987 and post-1986 periods of employment. However, the Superintendent only had jurisdiction to order the post-1986 benefits to be paid because neither the *Pension Benefits Act* nor the Plan provided for pre-1987 pre-retirement death benefits. The Court held that the valuation date was the date of death (based on the "wait and see" method employed with respect to the pension in the separation agreement) and that the 50% rule in subsection 51(2) of the *Pension Benefits Act* applied to the pre-retirement death benefits, not the entire pension benefit. The Court found that Ms. Stairs' interest was not derivative of the current spouse's interest and was therefore to be calculated based on her date of birth and was to continue until her date of death. Finally, the Court awarded costs to Ms. Stairs in the amount of \$25,000.00 payable on a partial indemnity basis by the Board.



III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a hearing before the Financial Services Tribunal ("FST"). A hearing was requested.

The FST held the hearing on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the *Pension Benefits Act*. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the *Pension Benefits Act*.

The Salaried Plan members have appealed the FST's decision to the Divisional Court. The appeal was set to be heard on January 29 and 30, 2004, but was adjourned to September 13 and 14, 2004.

IV. Marshall-Barwick Limited

The Financial Services Tribunal ("FST") held a hearing in this matter on September 9, 2002. The issue at this hearing was whether a Notice of Proposal proposing to refuse to approve the

partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The FST released its decision on November 29, 2002 upholding the Superintendent's Notice of Proposal and directing the administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed the FST's decision to the Divisional Court. No date has been set for hearing the appeal.

V. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003, requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.

VI. Donohue Forest Products Inc.

The spouse of a deceased Plan member requested a hearing before the Financial Services Tribunal ("FST") with respect to a Notice of Proposal issued by the Superintendent on November 8, 2002, which refused to order the plan administrator to recalculate the pre-retirement death benefit owing. The hearing took place July 2, 2003 and September 22 and 25, 2003. The FST released its decision on January 9, 2004, finding that the Notice of Proposal should be affirmed. The applicant has appealed the FST's decision to the Divisional Court. No date has been set yet for the hearing of the appeal.

VII. Kerry (Canada) Inc.

The Financial Services Tribunal ("FST") conducted a hearing that arose from a Notice of Proposal in which the Superintendent of

Financial Services proposed to order Kerry (Canada) Inc. to reimburse certain expenses paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released its decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the *Pension Benefits Act* for the Superintendent to order a plan amended.

A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision. No date has been set for the hearing of the appeal.



Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the Pension Plan. The first appearance was on June 13, 2002. The trial which was initially set for November 10, 2003, was adjourned on consent to May 11 and 18, 2004.

II. Microcolor Dispersions Ltd.

Charges were laid against the corporation and its 2 directors for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004.

III. John Parker

John Parker was a director of Microcolor Dispersions Inc. Charges were laid against Microcolor and its two directors for non-remittance contributions. The first appearance on the charges against Parker was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004.

IV. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer for the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario at which time the non-

remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. On December 11, 2003, the trial was set for April 29, 2004 in Haileybury.

V. Christopher Bain

Christopher Bain was a director and officer of Microcolour Dispersions Ltd. Charges were laid against Microcolour Dispersions Ltd. and its directors for non-remittance of contributions. Christopher Bain was convicted in his personal capacity for permitting the company to contravene the *Pension Benefits Act*. He was placed on probation and required to make restitution to the Plan. He failed to comply with the probation order and was charged with breach of probation. He recently pleaded guilty to breach of probation and after arranging to make full restitution to the Pension Plan he was fined \$250 on December 12, 2003.

VI. Slant/Fin Ltd./Ltee.

Charges were laid against the corporation for failing to file four financial statements in respect of the Employee Retirement Plan of Slant/Fin Limited. The first appearance was on January 15, 2004. On February 2, 2004, the corporation pleaded guilty to three of the four counts and was fined \$3,000, exclusive of the victim fine surcharge.

VII. Meto Canada Inc.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 1999, 2000, 2001 and 2002 with respect to the Meto Canada Inc. Employees Pension Plan. The first appearance was on April 6, 2004, when the matter was adjourned to May 4, 2004.



VIII. Mutual/Hadwen Imaging Technologies Inc.

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions.

The first appearance was on April 14, 2004, when trial dates were set for January 17 to 21, 2005.





LEGISLATIVE CHANGES/REGULATORY POLICIES

Ontario Regulation 444/03

On December 19, 2003, Ontario Regulation 444/03 was filed under the *Pension Benefits Act* to extend the application of subsections 8(1) and 8(2) of Regulation 909 to December 31, 2004.





SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments — Section 71 of the *Pension Benefits Act*

1. Morneau Sobeco as the Administrator of the Pension Plan for Hourly Employees of Ford-Smith Machine Company Limited (Registration No. 541565), effective immediately.
DATED at Toronto, Ontario, this 2nd day of February, 2003.
2. Morneau Sobeco as the Administrator of the Non-Contributory Retirement Plan for Salaried Employees of Ford-Smith Machine Company Limited and Ford-Smith Company Limited (Registration No. 288845), effective immediately.
DATED at Toronto, Ontario, this 2nd day of February, 2003.
3. London Life as the Administrator of the Retirement Plan for the Employees Of 821314 Ontario Ltd. (Registration No. 1031491), effective immediately.
DATED at Toronto, Ontario, this 21st day of January, 2003.
4. London Life as the Administrator of the Graphicshoppe Limited Pension Plan (Registration No. 695676), effective immediately.
DATED at Toronto, Ontario, this 21st day of January, 2003.
5. PricewaterhouseCoopers as the Administrator of the Pension Plan for Employees of Ryancon (Registration No. 298430), effective immediately.
DATED at Toronto, Ontario, this 17th day of December, 2003.
6. Canada Life as the Administrator of the Pension Plan for Employees of Arpeco Engineering Limited (Registration No. 0968537), effective immediately.
DATED at Toronto, Ontario, this 1st day of December, 2003.
7. Manulife as the Administrator of the Pension Plan for the Employees of Greenspoon Bros. Ltd. (Registration No. 258889), effective immediately.
DATED at Toronto, Ontario, this 27th day of October, 2003.
8. Morneau Sobeco as the Administrator of the Pension Plan of Marmoraton Mining Company (Registration No. 276139), effective immediately.
DATED at Toronto, Ontario, this 16th day of October, 2003.
9. Standard Life as the Administrator of the Pension Plan for the Employees of Elias Markets Ltd. (Registration No. 1063486), effective immediately.
DATED at Toronto, Ontario, this 23rd day of July, 2003.



Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 87 of the Act relating to the **Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915** (the "Plan");

TO: **Kerry (Canada) Inc.**
c/o Mr. William R. Coole,
Vice President & General Council
Kerry Inc.
100 East Grand Avenue,
Beloit, WI
USA
Employer and Administrator

AND TO: **Mr. J. David Vincent**
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
66 Wellington Street West
Suite 4200
Toronto Dominion Bank Tower
Box 20, Toronto Dominion Centre
Toronto, Ontario
M5K 1N6

Counsel to the Employer and Administrator

AND TO: **DCA EMPLOYEES PENSION COMMITTEE and WILLIAM FITZ**
c/o 112 Reeve Drive
Markham, Ontario
L3R 6C7

Requesters

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 87 of the Act.

PROPOSED ORDER:

I PROPOSE TO ORDER

1. **THAT** the Employer reimburse the pension fund of the Plan (the "Fund") for all amounts paid out of the Fund after January 1, 1985, for expenses which were not incurred for the exclusive benefit of the members and retired members of the Plan, their beneficiaries or estates and their contingent annuitants (other than taxes, interest and penalties levied against the Fund or the income thereof) **AND** reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund.
2. **THAT** the Employer amend the Plan and the Trust (both as defined herein), so that all amendments to the terms of the Plan and the Trust which permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan Document (both as defined herein).

REASONS FOR THE ORDER:

1. Canadian Doughnut Company Ltd. established the Plan as a defined benefit plan for employees in 1954, using a Plan Document (the "1954 Plan Document") and a Trust Agreement made as of December 31, 1954 (the "1954 Trust Agreement") with National Trust Company, Limited as the Trustee. Under the terms of the Plan the pension fund was to be held in trust (the "Trust").
2. Section 5 of the 1954 Trust Agreement provided that the expenses incurred by the Trustee would be paid by the Company, except for taxes, interest and penalties.

Section 11 permitted the 1954 Trust Agreement to be amended, but provided that all contributions may only be used exclusively for the benefit of members, retired members, their beneficiaries or estates and their contingent annuitants.

3. The 1954 Trust Agreement was replaced by an agreement made as of May 31st, 1958 between DCA Food Industries Ltd., formerly Canadian Doughnut Company Ltd. and National Trust Company, Limited (the "1958 Trust Agreement").
4. Section 1 of the 1958 Trust Agreement required all contributions made to the Fund to be held in trust and dealt with in accordance with the provisions of the Agreement. It specified that "no part of the corpus or income of the Fund shall ever revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated in the Plan."
5. Section 11 of the 1958 Trust Agreement permitted the agreement to be amended in whole or in part or terminated at any time. It specified: "provided however that unless approved by the Minister of National Revenue no such amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan, and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19 herein..."
6. Section 5 of the 1958 Trust Agreement provided that the expenses of the Trustee shall be paid by the Company, but that all taxes, including interest and penalties levied in
- connection with the Fund or the income thereof shall be paid from the Fund.
7. Section 19 of the 1958 Trust Agreement provided that the Company agreed to "pay all expenses incurred by it or by any Trustee in the execution of this Trust and to pay all compensation which may become due to any Trustee under the provisions of this Agreement."
8. The Plan was amended in 1975 to permit the fees and expenses incurred by the Fund Manager to be paid from the Fund. Amendments made in 1987 provided that all normal and reasonable expenses incurred in the operation of the Plan shall be withdrawn from the Fund, unless otherwise paid by the Company. Subsequent amendments have enlarged the list of expenses that can be paid from the Fund.
9. The amendments to the pension trust made by the 1958 Trust Agreement are inconsistent with the terms of the 1954 Trust Agreement to the extent that such amendments permitted any part of the Fund to be used other than for the exclusive benefit of the members and others referred to in section 11 of the 1954 Trust Agreement.
10. The amendments to the Plan which permitted expenses to be paid from the Fund, described in paragraph 8 above, are inconsistent with sections 5 and 11 of the 1954 Trust Agreement. The amending provision in the 1954 Trust Agreement permits amendments so long as no part of the Fund is used for or diverted to purposes other than for the exclusive benefit of the members and others referred to in section 11 of the 1954 Trust Agreement (except for the payment of taxes and interest and penalties as described in section 5).



11. The former president of DCA Canada Inc. has confirmed that the Company paid the expenses of the Trustee and of the operation of the Plan until 1985.
12. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 22nd day of April, 2002.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Britrail Travel International (Canada) Retirement Plan, Registration No. 0404095;**

TO: **Rail Europe Group Inc.**
44 South Broadway
White Plains, New York 10601

Attention: Mr. Duncan Still,
Chief Financial Officer
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Britrail Travel International (Canada) Retirement Plan, Registration No. 0404095 (the "Plan"), to Rail Europe Group Inc. in the amount of \$644,801.24 as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing of the distribution of surplus assets pursuant to section 79(3)(c) of the Act, to members, former members and other persons entitled to such payment in accordance with the Surplus Sharing Agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Rail Europe Group Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 1996.
3. As at June 30, 1996, the surplus in the Plan was estimated at \$718,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members and 85.7% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 89.81% to the Employer; and
 - b) 10.19% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 89.81% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Ms. Reesha Hosein,

Blake, Cassels & Graydon LLP

Ms. Lorraine Mahoney,
Allan Smart Services

Mr. Robert Southern

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404;**

TO: **United Dominion Industries Corporation**
 c/o Mr. Jeffrey L. Nugent
 SPX Corporation
 501 South Heilbron Drive
 MEDIA, PA 19063
 USA
 Applicant and Employer

AMENDED NOTICE OF PROPOSAL

(amended October 31, 2003)

WHEREAS United Dominion Industries Limited made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money that is surplus dated December 21, 2000.

AND WHEREAS effective June 30, 2000, United Dominion Industries was amalgamated with UDI Nova Scotia Holding Company pursuant to the *Companies Act* of Nova Scotia, being Chapter 81 of the Revised Statutes of Nova Scotia, 1989, to form United Dominion Industries Corporation.

AND WHEREAS as a result of such amalgamation, United Dominion Industries Corporation assumed all of the obligations and liabilities of United Dominion Industries Limited, including

the sponsorship of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404, and is therefore the Applicant and Employer.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of \$2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the plan and the distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. United Dominion Industries Corporation is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 2000.
3. As at June 30, 2000, the surplus in the Plan was estimated at \$2,755,586.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members, the surplus in the



Plan at the date of payment, after deduction of wind up expenses is to be distributed:

- a) 80% to the Employer; and
 - b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan adjusted for investment earnings and expenses related to the wind up of the Plan.
 7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
 8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP
Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183 (the "Pension Plan")**;

TO: London Life Insurance Company
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services
Administrator of the Pension Plan

AND TO: Cobra Machine Tool Co. Inc.
11600 County Road 42
R.R. #2
Tecumseh ON N8N 2M1

Attention: Charles Roberts,
General Manager
Employer

AND TO: KPMG Inc.
140 Fullarton Street
Suite 1200
P.O. Box 2305
London ON N6A 5P2

Attention: Stephen N. Cherniak, CA, CIRP
Vice President

**Trustee in Bankruptcy of
Cobra Machine Tool Co. Inc.**

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183, be wound up in full effective May 10, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
- 3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 5. Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE -- PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339** (the "Pension Plan");

TO: **Sun Life Assurance Company of Canada**
227 King Street South
Waterloo ON N2J 4C5

Attention: Lisa Wroblewski,
Account Representative
Administrator of the Pension Plan

AND TO: **General Publishing Co. Limited**
895 Don Mills Road
Suite 400, 2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey,
Administrator
Employer

AND TO: **Deloitte & Touche Inc.**
79 Wellington Street West
P.O. Box 1900
Toronto Dominion Centre
Toronto ON M5K 1B9

Attention: Rob Biehler,
Vice-President
Trustee in Bankruptcy of General Publishing Co. Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339, be wound up in full effective August 20, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 5. Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOT — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration No. 0681619;**

TO: **GPC Canada Inc.**
Suite 1300
100 Queen Street
Ottawa ON K1P 1J9

Attention: Jeremy Scott
VP & General Counsel
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration No. 0681619 (the "Plan"), to GPC Canada Inc. in the amount of \$12,000 as at January 1, 2003, with no adjustments to the date of payment.

I PROPOSE TO MAKE THE ORDER conditional on the Applicant satisfying me that provision has been made for the settlement of liabilities of the Pension Plan as calculated for purposes of termination of the Pension Plan, and on the remainder of the surplus being paid to the member.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. GPC Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 1, 2003.
3. As at January 1, 2003, the surplus in the Plan was estimated at \$17,200.
4. The Plan provides for payment of \$12,000 of the surplus to GPC Canada Inc. on the wind up of the Plan, for immediate transfer to the member as a retiring allowance.
5. The application discloses that by written agreement between the Employer and the member, \$12,000 of the surplus will be paid to the Employer to provide a retiring allowance to the member, with the remainder of the surplus being paid to the member.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of surplus in the Plan.
7. The application appears to comply with subsection 79(3)(a) and 79(3)(b) of the Act and with clause 8(1)(b).
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**YOUR WRITTEN NOTICE REQUIRING A
HEARING must be delivered to:**

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-
BUNAL, WITHIN THIRTY (30) DAYS
FROM THE DATE THIS NOTICE OF PRO-
POSAL IS SERVED ON YOU, A WRITTEN
NOTICE THAT YOU REQUIRE A HEAR-
ING, I MAY MAKE THE ORDER PRO-
POSED HEREIN.**

DATED at Toronto, Ontario, this 7th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Ashley Crozier,
Crozier Consultants Inc.

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c. P.8.* as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. S.8* (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819;**

TO: **Federal White Cement Limited**
P.O. Box 548
Woodstock ON N4S 7Y5

Attention: Mr. Antonio M.A. Lopes, CA, MBA
Controller

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819 (the "Plan"), to Federal White Cement Limited in the amount of \$173,300 as at December 31, 2002, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Federal White Cement Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 2002.
3. As at December 31, 2002, the surplus in the Plan was estimated at \$173,300.

4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding of investment earnings and deducting 100% of the expenses related to the wind up of the Plan).
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

¹NOTE — PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally in person, by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



DATED at Toronto, Ontario, this 25th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Ms. Donna Wolfe,
Cowan Wright Beauchamp Limited



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Revised Pension Plan for Employees of Pelee-Delta Electric Inc. Registration Number 363218;**

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON MSG 1R8

Attention: Ms. Milica Stojsin
Administrator

AND TO: **Pelee-Delta Electric Inc.**
P.O. Box 2049
Sarnia Stn. Main
Sarnia ON N7T 7L3

Attention: Ms. Paula Pope
Employer

AND TO: **Funtig & Associates Inc.**
484 Pelissier St.
Windsor ON N9A 4K9

Attention: Mr. Peter Wasylyk
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218 (the "Plan"), be wound up in whole effective November 13, 2001.

REASONS:

1. There is a cessation or suspension of contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. There is a failure of the Employer to make contributions to the pension fund pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada) pursuant to clause 69(1)(c) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

¹NOTE — PURSUANT TO section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



DATED at North York, Ontario, this 25th day
of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE -- Pursuant to section 112 of the Act **any** Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Pension Plan for Bono Construction Limited, Registration Number 0499608** (the "Pension Plan");

TO: **The Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Milica Stojsin,
Plan Wind-up Consultant
Investments & Pensions
Administrator of the Pension Plan

AND TO: **Bono General Construction Limited**
899 Nebo Road
R.R. #2, P.O. Box 51
Hannon ON L0R 1P0

Attention: Joe Muraca,
Office Manager
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto ON M5H 1V8

Attention: Clark Lonergan
Trustee in Bankruptcy for Bono General Construction Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Bono Construction Limited, Registration Number 0499608, be wound up in full effective December 31, 2000.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 5. Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 12th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc.**, Registration No. 283358 (the "Plan");

TO: **Morneau Sobeco**
 895 Don Mills Road, Suite 700
 One Morneau Sobeco Centre
 Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
 Senior Consultant
Administrator

AND TO: **Peterborough Paper Converters Inc.**
 550 Braidwood Avenue
 Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
 Vice-President, Finance
Employer

AND TO: **Sack Goldblatt Mitchell**
 20 Dundas Street West, Suite 1130
 PO Box 180
 Toronto ON MSG 2G8

Attention: Mr. Michael Kainer
Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

AND TO: **PricewaterhouseCoopers Inc.**
 55 King Street West, Suite 900
 Kitchener ON N2G 4W1
Attention: Mr. Aldis Makovskis,
 Senior Vice-president
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective February 1, 2002 through March 8, 2002.

REASONS:

1. Cessation or suspension of the Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan have ceased to be employed by the Employer as a result of the discontinuance or reorganization of all or part of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
6. Such further reasons as may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 12th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration No. 0567479;**

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration No. 0567479 (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of \$800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the "Surplus Distribution Agreement").

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. ExxonMobil Chemical Films Canada Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective October 31, 1986.
3. As at October 31, 1986, the surplus in the Plan was estimated at \$1,600,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 94.3% of the members of the Plan and 88.8% of the former members and other persons entitled to payments under the Plan, the surplus in the Plan at the date of payment, after deduction of wind up and other expenses, as described in the Surplus Distribution Agreement, is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment returns and deducting 50% of the expenses related to the wind up of the Plan and the distribution of surplus therefrom, in accordance with the terms of the Surplus Distribution Agreement).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 19th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Evan Howard, Osler Hoskin & Harcourt LLP

Ari Kaplan, Koskie Minsky

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807**;

TO: **WCI Canada Inc.**
866 Langs Drive
Cambridge, Ontario
N3H 2N7

Attention: Richard Laba,
President
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Pension Plan for Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807 (the "Plan"), to WCI Canada Inc. in the amount of \$286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. WCI Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective January 30, 1998.

3. As at January 30, 1998, the surplus in the wound up portion of the Plan was estimated at \$741,349.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and the union on behalf of the affected members, approximately 61% of the surplus in the Plan attributable to the partial wind up group was used to improve benefits for the affected members with the remainder distributed after expenses.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately 39% of the surplus attributable to the partial wind up group in the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, **you deliver to the Tribunal a written notice that you require a hearing.**¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**YOUR WRITTEN NOTICE REQUIRING A
HEARING must be delivered to:**

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-
BUNAL, WITHIN THIRTY (30) DAYS
FROM THE DATE THIS NOTICE OF PRO-
POSAL IS SERVED ON YOU, A WRITTEN
NOTICE THAT YOU REQUIRE A HEAR-
ING, I MAY MAKE THE ORDER PRO-
POSED HEREIN.**

DATED at Toronto, Ontario, this 6th day of
January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Marc Vigneault — Standard Life

IN THE MATTER OF the Pension Benefits Act,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171 (the "Pension Plan")**;

TO: **London Life Assurance Company**
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services
Administrator of the Pension Plan

AND TO: **Denton Technologies Inc.**
30 Casebridge Court
Scarborough ON M1B 3M5

Attention: Judy Coish,
Office Manager
Employer

AND TO: **Grant Thornton Limited**
PO Box 55, Royal Bank Plaza
19th Floor, South Tower
Toronto ON M5J 2P9

Attention: Jonathan Krieger, CA, CIRP
Vice President
Trustee in Bankruptcy and Receiver of Denton Technologies Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171, be wound up in full effective December 13, 2001. I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
- 3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 5. Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Hanson & Wells Inc., Registration No. 909713** (the "Plan");

TO: **McGean-Rohco, Inc.**
c/o Torkin Manes Cohen Arbus llp
151 Yonge Street, Suite 1500
Toronto ON MSC 2W7

Attention: Warren S. Rapoport,
Agent for McGean-Rohco, Inc.
Applicant

NOTICE OF PROPOSAL

WHEREAS 2756862 Canada Inc., formerly Hanson & Wells Inc., sponsored the Plan which provided a contributory defined benefit for certain of its employees;

AND WHEREAS 2756862 Canada Inc. became bankrupt effective November 30, 1993;

AND WHEREAS McGean-Rohco, Inc. is the Receiver and Secured Creditor of 2756862 Canada Inc. under a General Security Agreement dated February 25, 1993 and a Purchase Money Security Interest dated February 25, 1993;

AND WHEREAS McGean-Rohco Inc. in its capacity as Receiver of the assets of 2756862 Canada Inc. is entitled to receive any surplus funds payable to 2756862 Canada Inc. (the "Employer") under the Plan;

AND WHEREAS McGean-Rohco, Inc. made an application to the Superintendent of Financial Services for the consent of the Superintendent

to payment of money out of the Plan that is surplus dated October 7, 2002.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to the payment out of the Plan, to McGean-Rohco, Inc. in the amount of \$368,855.50 (representing 50% of the Wind Up Surplus in the Plan of \$737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan Administrator in the administration and wind up of the Plan, and minus \$25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities, all of the above being in accordance with the terms of the Surplus Sharing Agreement dated March 19, 2002.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement described in paragraph #6 below) and any other payments to which the members, former members, and any other persons are entitled under the Plan have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Plan was wound up, effective November 30, 1993.
2. As at November 30, 1993, the surplus in the Plan was estimated at \$737,711.
3. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
4. The Employer became bankrupt effective November 30, 1993.

5. McGean-Rohco, Inc. in its capacity as Receiver of the assets of the Employer is entitled to receive any surplus funds payable to the Employer under the Plan.
6. The application discloses that by written agreement made by McGean-Rohco, Inc., the United Steelworkers of America, Local 14183 on behalf of the hourly members who were active employees at the date of wind-up, and by 88.9% of the active salaried members, former members and other persons entitled to payments from the Plan, the surplus in the Plan at the date of payment, after deduction of wind up expenses and a contingency reserve of \$50,000.00, is to be distributed:
 - a) 50% to McGean-Rohco, Inc.; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
7. McGean-Rohco, Inc. has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"), for the consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses and a contingency reserve accumulated or established since the wind up date of the Plan).
8. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as may come to my attention.

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Ms. Sharon Carew

Director, Global Human Resources
PricewaterhouseCoopers Inc.

Ms. Dona L. Campbell
Sack Goldblatt Mitchell

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Employees Retirement System of ABC Rail Limited, Registration Number 0104197** (the "Pension Plan");

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Tony Karkheck,
Senior Vice President
**Administrator of the
Pension Plan**

AND TO: **ABC Rail Limited**
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar,
Manager, Employee Benefits
Employer

AND TO: **Teamsters Joint Council 79**
255 Morningside Avenue
Scarborough ON

Attention: Peter Mills
President
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Employees Retirement System of ABC Rail Limited, Registration Number 0194197, be wound up in full effective November 6, 1991. I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

- 1. The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
- 2. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 3. Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

NOTE – PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 5th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c.P.8, as amended (the "Act");
AND IN THE MATTER OF a proposal by the
Superintendent of Financial Services to Make an
Order under section 69 of the Act respecting the
Coats Canada Employees' Pension Plan,
Registration No. 288563 (the "Plan");

TO: **Coats Canada Inc.**
1001 Roselawn Avenue
Toronto, Ontario
M6B 1B8

Attention: Ms. Silvana Morra,
Human Resources Manager
Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under section 69 (1) of the Act that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by Coats Canada Inc. (the "Employer") and who ceased to be employed by the Employer between July 1999 and December 31, 1999, as a result of:

- (i) the discontinuance of all or a part of the business of the Employer; or
- (ii) the discontinuance of all or a significant portion of the business carried on by the Employer at its Coats Paton Division.

REASONS FOR THE ORDER:

1. The Employer, Coats Canada Inc., is the Employer and Administrator of the Plan.
2. The Plan was created by the merger of the following three pension plans effective December 31, 1997: the Pension Plan for the Employees of Coats Paton Division of Coats Canada Inc., Registration No. 0288563 (the "Coats Paton Plan"), the Pension Plan for the Employees of Coats Canada Inc. and

Participating Affiliates, Registration No. 0353839, and the Coats Bell Pension Plan, Registration No. 0221473.

3. The business carried on at the Coats Paton Division was discontinued over the period July 1999 to December 31, 1999. Cowan Wright Limited, consultants for Coats Canada Inc., by letter dated November 12, 2001 to the Pension Plans Branch of the Financial Services Commission of Ontario (FSCO) informed FSCO that the closure of the Coats Patons Division resulted in the termination of 124 members of the Plan over the period July 1999 to December 31, 1999.
4. The Actuarial Report for the Plan as at July 1, 2000 (the "2000 Actuarial Report") showed that as at December 31, 1997 there were 198 active members in the Plan. However, as at July 1, 2000, the total number of active members in the Plan was reduced to 66.
5. Therefore, all or a significant portion of the business carried on by the Employer at its Coats Paton Division was discontinued between July 1999 and December 31, 1999, within the meaning of section 69(1)(e) of the Act.
6. A significant number of members of the Plan ceased to be employed by the Employer as result of the discontinuance of all or part of the business of the Employer at its Coats Paton Division between July 1999 and December 31, 1999, within the meaning of section 69(1)(d) of the Act.
7. Such further and other reasons that may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between July 1999 and December 31, 1999.

DATED at North York, Ontario, this 5th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the
Superintendent of Financial Services to Make an
Order under section 69 of the Act respecting the
Pension Plan for Hourly Employees of
Cold Metal Products Limited, Registration
Number 0975045 (the "Pension Plan");

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Tony Karkheck,
Senior Vice President
Administrator of the
Pension Plan

AND TO: **Cold Metal Products Limited**
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2

Attention: Soheil Monzavi,
General Manager
Employer

AND TO: **Richter & Partners**
200 King Street West
Suite 1900
Toronto ON M5H 3T4

Attention: Javed Rasool
Trustee in Bankruptcy for
Cold Metal Products Limited

AND TO: **The United Steelworkers of**
America Local, 4444
1031 Barton Street East, Room 113
Hamilton ON L8L 3E3

Attention: Roy Leslie,
Staff Representative
Union

AND TO: **The United Steelworkers of**
America Local, 7625
4115 Ontario East
Montreal PQ H1V 1J7
Attention: Gaetan Pare,
Local President
Union

NOTICE OF PROPOSAL TO MAKE **AN ORDER**

I PROPOSE TO MAKE AN ORDER that the
Pension Plan for Hourly Employees of Cold
Metal Products Limited, Registration Number
0975045, be wound up in full effective March
17, 2003.

I propose to make this order pursuant to subsection
69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR **THE FOLLOWING REASONS:**

- 1. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 2. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganisation of the business of the Employer.**
- 3. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
- 4. All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's**



**Pension Plan who become employees
of the person.**

**5. Such further reasons as may come to
my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING
shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRI-
BUNAL, WITHIN THIRTY (30) DAYS
FROM THE DATE OF THIS NOTICE OF
PROPOSAL IS SERVED ON YOU, A WRIT-
TEN NOTICE THAT YOU REQUIRE A
HEARING, I MAY MAKE THE ORDER PRO-
POSED HEREIN.**

DATED at Toronto, Ontario, this 20th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — PURSUANT TO section 112 of the ~~Act~~ any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for the Employees of Greenspoon Bros. Limited, Registration Number 258889 (the "Plan")**;

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Darlene Stegner,
Plan Design Specialist
Administrator

AND TO: Greenspoon Bros. Limited
16 Melanie Drive
Brampton ON L6T 4K9

Attention: Mr. Ira Greenspoon,
Vice-President, Finance
Employer

AND TO: Mandelbaum Spergel Inc.
505 Consumers Road, Suite 200
Toronto ON M2J 4V8

Attention: Mr. Bryan Gelman
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective April 30, 2003.

REASONS:

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 20th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Salaried Employees of Finlayson Enterprises Ltd., Registration Number 247593 (the "Plan")**;

TO: **The Manufacturers Life Insurance Company**
 Canadian Pension Operations
 500 King North, PO Box 1602
 Waterloo ON N2J 4C6

Attention: Ms. Darlene Stegner,
 Plan Design Specialist
Administrator

AND TO: **Finlayson Enterprises Ltd.**
 1510B Caterpillar Road
 Mississauga ON L4X 2W9

Attention: Ms. Victoria Mayers,
 Vice-President and Controller
Employer

AND TO: **Deloitte & Touche Inc.**
 Suite 1900,
 79 Wellington Street West
 PO Box 29, TD Centre
 Toronto ON M5K 1B9

Attention: Mr. Wes Treleaven,
 Senior Vice-President
Trustee in Bankruptcy

AND TO: **Shiner Zweig Inc.**
 40 West Pierce Street, Suite 4
 Richmond Hill ON L4B 1B6

Attention: Mr. Wes Treleaven,
 Senior Vice-President
Receiver & Manager

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective January 6, 2003.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. The Employer's business has been sold and the successor employer does not provide a pension plan the employees acquired, pursuant to clause 69(1)(f) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 24th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration No. 0223404** (the "Plan");

TO: **Valeo Engine Cooling, Company**
4100 North Atlantic Blvd.
Auburn Hills, MI
48326 USA

Attention: Mr. Jerome Pedretti
Employer and Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act consenting to payment of money that is surplus to Valeo Engine Cooling, Company (the "Applicant") out of the Plan in the amount of \$1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements, including benefits and benefit enhancements pursuant to the surplus sharing agreement dated April 30, 2002 (the "Surplus Sharing Agreement") between the Applicant and all members and former members of the Plan (as defined in the application) (the "Participants"), and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:

1. Valeo Engine Cooling, Company is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1998.
3. As at December 31, 1998, the surplus in the Plan was estimated at \$1,941,059.
4. There is an Order of the Ontario Superior Court of Justice dated October 31, 2003, that the Plan provides for the payment of surplus, within the meaning subsection 79(3)(b) of the Act, to the Applicant as contemplated by the Surplus Sharing Agreement.
5. The Surplus Sharing Agreement discloses that the Participants' share of the surplus remaining on Plan wind up is to be an amount equal to \$900,000 to be allocated among the Participants as set out in Surplus Sharing Agreement. Any amounts of surplus remaining after payment, distribution or other provision for the Participants' share will be payable to the Applicant, adjusted for any income or losses on the investment of the surplus and for all costs and expenses charged against the Plan from the wind up date through to the date of surplus distribution in accordance with section 5 of Surplus Sharing Agreement.
6. The Employer has applied, pursuant to subsections 78(1) and 79(3) of the Act and subsection 8(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"), for consent of the Superintendent of Financial Services to the payment of the surplus remaining on Plan wind up after distribution of surplus among the Participants in accordance with the Surplus Sharing

Agreement and after payment of all costs and expenses associated with the Plan wind up and surplus distribution, plus investment earnings thereon to the date of surplus payment, as described in the Surplus Sharing Agreement.

7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 1st day of March, 2004.

K. David Gordon,
Deputy Superintendent, Pensions
c.c. Paul Litner, Osler Hoskin & Harcourt LLP

Michael Mazzuca, Koskie Minski

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the
Superintendent of Financial Services to Make
an Order under section 69 of the Act relating to
**the Pension Plan for Employees of Port
Colborne Iron Works, Limited who
are Members of the Bargaining Unit
Represented by the United Steel Workers
of America, Registration Number 289439
(the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck,
Human Resource Services
Appointed Administrator

AND TO: **Port Colborne Iron Works
Limited**
PO Box 66
Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.,
President
Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street
Welland ON L3B 3V6

Attention: Mr. David Ponting,
Partner
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect
of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective
October 25, 2002 through November 12, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all or part of business of the employer pursuant to clause 69(1)(d) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 8th day of March, 2004.

K. David Gordon,
Deputy Superintendent, Pensions



Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under sections 69 and 87 of the Act relating to the **Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915** (the "Plan");

TO: **DCA EMPLOYEES
PENSION COMMITTEE and
WILLIAM FITZ**
c/o 112 Reeve Drive
Markham, Ontario
L3R 6C7

Requesters

AND TO: **Kerry (Canada) Inc.**
c/o Mr. William R. Coole
Vice President & General Council
Kerry Inc.
100 East Grand Avenue,
Beloit, WI
USA

Employer and Administrator

AND TO **Mr. J. David Vincent**
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
66 Wellington Street West
Suite 4200
Toronto Dominion Bank Tower
Box 20, Toronto Dominion Centre
Toronto, Ontario
M5K 1N6

**Counsel to the
Employer and Administrator**

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER in respect of the Plan under sections 69, 87 and 18(1)(d) of the Act.

PROPOSED ORDER:

I PROPOSE TO:

- 1. REFUSE TO ORDER** that the Plan be wound up effective December 31, 1994, under section 69 of the Act;
- 2. REFUSE TO ORDER** that Kerry (Canada) Inc. pay to the pension fund of the Plan all Employer contributions for which a contribution holiday has been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the pension fund of the Plan if those contributions had been made, under section 87 of the Act; **AND**
- 3. REFUSE TO ORDER** that registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act.

REASONS FOR THE ORDER:

- I propose to refuse to order that the Plan be wound up effective December 31, 1994, under section 69 of the Act for the following reasons:**
 - a) The Plan was created in 1954 by Canadian Doughnut Company Limited (later DCA Canada Inc.). The corporate assets of DCA Canada Inc. were sold to Kerry Ingredients Canada Inc. (later Kerry (Canada) Inc.) effective December 31, 1994. The employees of DCA Canada Inc. ("DCA") were transferred to Kerry Ingredients (Canada) Inc. ("Kerry") as of December 31, 1994 and Kerry assumed the employees of DCA and the assets and liabilities of the Plan as of December 31, 1994. Kerry became the Company

- under the terms of the Plan and the Plan and the pension fund continued.
- b) There is no evidence that on December 31, 1994, there was a cessation or suspension of Employer contributions to the pension fund or that the Employer failed to make contributions to the pension fund as required by the Act or the regulations, as specified in clause 69(1)(a) and (b) of the Act.
 - c) There is no evidence that on December 31, 1994, the Employer (either DCA or Kerry) was bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, as specified in clause 69(1)(c) of the Act.
 - d) There is no evidence that on December 31, 1994, a significant number of members of the Pension Plan ceased to be employed by the Employer as the result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, as specified in clause 69(1)(d) of the Act.
 - e) There is no evidence that on December 31, 1994, all or a significant portion of the business carried on by the Employer at a specific location was discontinued, as specified in clause 69(1)(e) of the Act.
 - f) There is no evidence that on December 31, 1994, all or part of the Employer's business or all or part of the assets of the Employer's business were sold, assigned or otherwise disposed of and the person who acquired the business or assets did not provide a pension plan for the members of the Employer's Pension Plan who became employees of the person, as specified in clause 69(1)(f) of the Act.
 - g) There is no evidence on December 31, 1994, that the liability of the Guarantee Fund was likely to be substantially increased unless the Plan is wound up, that the Plan is a multi-employer pension plan or that any other prescribed event or prescribed circumstance has occurred, as specified in clauses 69(1)(g), (h) or (i) of the Act.
 - h) Therefore there are no grounds for ordering a wind up, in whole or in part, of the Plan as of December 31, 1994 under section 69 of the Act and the Superintendent has no jurisdiction to make such an order.
 - i) Such further reasons as may come to my attention.
- 2. I propose to refuse to order Kerry (Canada) Inc. to pay to the pension fund of the Plan all Employer contributions for which a contribution holiday has been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the pension fund of the Plan if those contributions had been made, under section 87 of the Act, for the following reasons:**
- a) The Plan was created in 1954 by a plan document ("1954 Plan Document") and a trust agreement ("1954 Trust Agreement"). Neither the 1954 Plan Document nor the 1954 Trust Agreement prohibited the taking of contribution holidays by the Employer.
 - b) Section 22 of the 1954 Plan Document and Section 11 of the 1954 Trust

Agreement permitted amendments to the Plan and Trust so long as no part of the pension fund was used or diverted for purposes other than for the exclusive benefit of the members [of the Plan] retired members [of the Plan], their beneficiaries or estates and their contingent annuitants.

- c) The Plan was amended in 1964 and in 1992 to expressly permit the Employer to take contribution holidays.
- d) The amendments to the Plan to allow the Employer to take contribution holidays were permitted by the terms of the Plan and were not prohibited by the Act. Those amendments did not amount to an encroachment upon the trust nor a reduction of accrued benefits. Those amendments did not reduce the corpus of the fund nor did they amount to applying the moneys contained in it to something other than the exclusive benefit of the employees, as was determined by Cory J. for the majority of the Supreme Court of Canada in *Schmidt et al v. Air Products of Canada Ltd. et al*, (1994) 115 D.L.R. (4th) 631 (SCC) at page 664.
- e) The former President of DCA Canada Inc. has confirmed that DCA Canada Inc. began to take contribution holidays in 1985.
- f) Since the DCA Canada Inc. began to take contribution holidays in 1985, the Plan has contained provision which permitted the Employer to take contribution holidays.

g) There is no evidence that by taking contribution holidays the Plan is not being administered in accordance with the Act, the regulations or the Plan as required by section 87(2)(a) of the Act and therefore the Superintendent has no jurisdiction to make an order under section 87 of the Act.

h) Such further reasons as may come to my attention.

3. I propose to refuse to order that registration of the Revised and Restated Plan Text dated January 1, 2000 and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act, for the following reasons:

- a) The Revised and Restated Plan Text dated January 1, 2000, contains amendments which add a new defined contribution component to the Plan and which permit members of the Plan to convert their defined benefit benefits to defined contribution benefits.
- b) The provisions of the Revised and Restated Plan Text dated January 1, 2000, including the amendments adding the defined contribution component to the Plan and permitting members of the Plan to convert to defined contribution benefits, do not conflict with the pension trust and otherwise comply with the provisions of the Act, the regulations and FSCO policies that apply to such conversions.
- c) Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 22nd day of April, 2002.

K. David Gordon,
Deputy Superintendent, Pension Division

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the Act respecting the **de Havilland/Brad Salaried Employees Pension Plan, Registration Number 241174 (the "Salaried Plan")**;

TO: **Mr. R.N. Priest**
627 The West Mall, Suite 309
Toronto ON M9C 4X5

Applicant

AND TO: **Bombardier Inc.**
123 Garratt Blvd.
Downsview ON M3K 1Y5

Attention: Mr. Andrew Ng,
Pension Specialist
Employer and Administrator of the Salaried Plan

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the Act directing Bombardier Inc. (the "Employer") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

REASONS FOR THE REFUSAL:

1. The Applicant was a member of the Salaried Plan. In late 1994, the Applicant ceased being a salaried employee and became a unionized employee instead. He became a member of another Pension Plan of the Employer. No further contributions were made to the Salaried Plan on the Applicant's behalf by the Employer, nor did the Applicant make any voluntary contributions to the Salaried Plan.

2. The Applicant was temporarily laid off by the Employer on December 13, 2002, with a recall date set for February 3, 2003. On January 21, 2003, the Applicant notified the company in writing that he was terminating his membership in the Salaried Plan under section 38(1)(c) of the Act and requested that his pension funds in the Salaried Plan be transferred to a LIRA account of his choice.
3. The Applicant in his letter to the Financial Services Commission of Ontario dated February 16, 2003, stated that because he was laid off from employment with the Employer on December 13, 2002, he was entitled to terminate membership in the Plan in accordance with section 38(1)(c) of the Act. As a result, the Applicant claims that since he had terminated membership in the Salaried Plan he is deemed to have terminated employment with the Employer for the purpose of determining benefits under section 38(2) of the Act. The Applicant maintains that his employment with the Employer was terminated for the purposes of section 37(2)(c) of the Act and that therefore he is entitled to have the pension funds transferred out of the Plan to a Locked in Retirement Account ("LIRA") of his choice.
4. Section 38(1)(c) of the Act provides that a member of a pension plan who has been laid off from employment by the employer is entitled to terminate his or her membership in a pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period as specified in the pension plan.

5. Section 2.4 of the Salaried Plan provides that a member who transfers membership to another registered Pension Plan of the Employer shall immediately cease to accrue further benefits under the Salaried Plan, but shall not be deemed to have terminated employment in accordance with section 8 of the Salaried Plan. The benefits accrued to the member under the Salaried Plan will remain to his credit until his retirement, death or termination of employment or termination of the Salaried Plan. Section 2.4 of the Salaried Plan further provides that continuous employment of such a former member shall, for the purpose of the Plan, count as Total Service but not as Credited Service.
6. In order for a member of a pension plan to terminate his or her membership in the pension plan under section 38(1)(c) of the Act, the member must be laid off from employment by the employer and there must be no contributions paid or required to be paid to the pension fund by or on behalf of the member for 24 consecutive months or for such shorter period as specified in the pension plan.
7. The Applicant in this case was laid off on December 12, 2002 with a recall date set for February 3, 2003. The member returned to employment on that date. On January 21, 2003, when the Applicant notified the company in writing that he was terminating his membership in the Salaried Plan, the Applicant had not been laid off for a period of 24 consecutive months. Therefore, the Applicant was not entitled to terminate his membership in the Salaried Plan under section 38(1)(c) of the Act. As a result the Applicant is not deemed to have terminated his employment under section 38(2) of the Act.
8. Under section 37(1) of the Act a member of a pension plan is only entitled to a deferred pension if he satisfies the qualifications set out in section 37(2) of the Act, one of which is that a member's employment must be terminated. Since the Applicant's employment was not terminated — he was temporarily laid off — he is not entitled to a deferred pension under section 37(3).
9. Under section 42(1) of the Act a former member of a pension plan is only entitled to transfer his pension benefits from the plan if employment is terminated or membership ceases (as set out in Section 38 of the Act).
10. Therefore, the Applicant is not entitled to have his pension benefits transferred from the Salaried Plan to a LIRA of his choice as neither his employment nor his membership have been terminated.
11. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the Act.
12. For the reasons set out above, the Superintendent is not of the opinion that the Salaried Plan is not being administered in accordance with the Act.
13. Such further reasons as may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext.7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY
REFUSE TO MAKE THE ORDER AS PRO-
POSED IN THIS NOTICE.**

DATED at Toronto, Ontario, this 10th day of December, 2003.

K. David Gordon,
Deputy Superintendent, Pension Division
By Delegated Authority

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the Act respecting a request by Mr. Hugo Jaik relating to
The Electrical Industry of Ottawa Pension Plan, Registration No. 0586396 (the "Plan");

TO: **Hugo Jaik**
 216 Donald B. Munro Drive
 Carp ON KOA 1L0

AND TO: **Board of Trustees of
 The Electrical Industry of
 Ottawa Pension Plan**
 c/o Coughlin & Associates Ltd.

Attention: Lisa Broda,
 Associate Consultant
 P.O. Box 3517, Stn C
 Ottawa ON K1Y 4H5

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER:

- (a) requiring the Board of Trustees of The Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit; and
- (b) requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

REASONS FOR THE REFUSAL:

1. Hugo Jaik is a former member of the Plan.
2. The Plan is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board"). It covers members of the International Brotherhood

of Electrical Workers, Local 586 ("IBEW, Local 586").

3. Mr. Jaik has been a member of IBEW, Local 586, since 1974 and is receiving a pension from the Plan.
4. Mr. Jaik has requested the Superintendent make an order on the basis that the Plan is not being administered in accordance with its provisions and the Act. Mr Jaik has not indicated specifically what order he is seeking, but has submitted the following in support of his request for an order: the current composition of the Board does not comply with the requirements of the Plan; in the absence of a properly constituted Board there is no authority in the Board to pass amendments and approve expenses; the Plan is not determining the amount of pensions payable under the Plan in accordance with its provisions, resulting in members getting less than what they contributed; and Mr Jaik's pension is not being calculated in accordance with the terms of the Plan, resulting in him getting less than what he is entitled to.
5. The Plan is governed by the following documents: a Trust Agreement, originally entered into on October 1, 1962, now completely restated and replaced by a Restated Agreement and Declaration of Trust entered into as of March 22, 1993, including subsequent amendments (the "Trust Agreement"); the Plan Document, restated January 1, 1994 including subsequent amendments (the "Plan Document"); and by the provisions in collective bargaining agreements between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario (the "employers") and the International



Brotherhood of Electrical Workers, Local Union 586 (the "union");

Mr. Jaik's Benefits

6. The Plan is a multi-employer, defined benefit plan where members are entitled to a pension based on a formula set out in the Plan Document. Contributions are limited to Employer contributions as negotiated under collective agreements between the union and the Employers. Members are prohibited under the terms of the Plan Document from contributing to the Plan. Section 7.02 of the Plan Document provides "Members are not required nor permitted to make contributions under the Plan" and section 7.05 provides "A Member may not make Additional Voluntary Contributions to the Plan."
7. When the current Plan Document was completely restated as of January 1, 1994 the formula for the pension benefit was changed from a "Brotherhood System" to a "Quasi-Hour Bank System." Under the "Brotherhood System" all members receive the same pension credits regardless of hours worked. Under the "Quasi-Hour Bank System" members accrue pension credits based on the number of hours worked. The pension formula, as updated in amendment 5 to the 1994 restatement (passed by the Board of Trustees on the 8th day of February 2001), continues the pension accrual based on the "Brotherhood System" for service prior to January 1, 1994, and provides for pension accrual based on the "Quasi-Hour Bank System" for service on or after January 1, 1994. It now reads:

11 AMOUNT OF PENSION

11.1 Pension Credits

11.1.1. Service Prior to January 1, 1994

Each Member who retires at the Normal Retirement Date shall be entitled to a Retirement Pension calculated as:

- a) where Retirement occurs after January 1, 1988, but prior to July 1, 1988 — \$30 per month per year of Credited Service up to December 31, 1982, plus \$35.00 per month per year of Credited Service after December 31, 1982, or
- b) where Retirement occurs after June 30, 1998 — \$35.00 per month per year of Credited Service up to June 30, 1988, plus \$40.00 per month per year of Credited Service after June 30, 1988, up to December 31, 1993.

In addition, all active members who received pension credits for the month of December 1993 will receive a 5% increase on all pension credits accumulated prior to January 1, 1994. All inactive and retired members who received pension credits for the month of December 1993 will receive an increase not to exceed the lesser of 3% or the increase in the Consumer Price Index, on all pension credits accumulated prior to January 1, 1994.

Notwithstanding the above, all members who worked at least one hour in 1998, or were disabled prior to January 1, 1999, will also receive a 6% increase on all pension credits accumulated prior to January 1, 1994.

11.1.2. Service After December 31, 1993

a) Members who retired, terminated or died prior to January 1, 1999

Members who are classified as "Hourly Workers" will receive a pension credit of \$0.05 per month per hour worked after December 31, 1993.

Members who are classified as "Flat Rate Contributors" will receive a pension credit of \$40.00 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, and \$62.50 per month per year of Credited Service after June 30, 1994 but prior to January 1, 1999.

b) Members who retired, terminated or died after December 31, 1998

Members who are classified as "Hourly Workers" will receive a pension credit of \$0.053 per month per hour worked after December 31, 1993 and before January 1, 1999, and \$0.065 per month per hour worked after December 31, 1998.

Members who are classified as "Flat Rate Contributors" will receive a pension credit of \$42.40 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, \$66.25 per month per year of Credited Service from July 1, 1994 to December 31, 1998, and \$81.25 per month per year of Credited Service after December 31, 1998.

11.1.3 Adjustment to Pensions in Pay

All retirees in receipt of a pension from the Plan as of December 31, 1998, will receive an increase not to exceed the lesser of 6% or the increase in the

Consumer Price Index, effective January 1, 1999.

8. The description of the pension benefit that accrued for service prior to January 1, 1994 (set out in clause 11.1.1) consists of a flat benefit payable per month per year of service. Mr Jaik claims that trustees have not calculated his benefit correctly for this period of service. He submits the amount of his pension does not reflect the level of contributions he has made to the Plan. Further he submits that the different monthly amounts referred to in clauses 11.1.1 (a) and (b) should be combined when calculating the monthly accrual. For example in 11.1.1. (b) where it states that the pension shall be calculated as \$35.00 per month per year Credited Service up to June 30, 1988, plus \$40.00 a month per month per year of Credited Service after June 30, 1988, up to December 31, 1993, Mr. Jaik claims he should be credited with \$75.00 per month per year of service.
9. Mr. Jaik's interpretation of how the Plan operates and the amount of benefits it provides is in error. As a defined benefit plan, the amount of contributions made (exclusively by the employer in this case) is not used to determine the amount of the pension. The amount of the pension is determined by the formula, in this case, for service prior to January 1, 1994 as set out in s.11.1.1. The formula provides for amounts that are payable with respect to different periods of service and are not intended to be added together for the purposes of calculating the total amount of the pension. In the example referred to in paragraph 8, the benefit of \$35.00 per month per year applies when calculating the service applicable for the period up to June 30, 1988 and the ben-



efit of \$40.00 a month applies when calculating the service applicable after June 30, 1988 and before January 1, 1994. The amounts are not combined in respect of any period of service.

10. Based on the specific information relating to Mr. Jaik's pension that has been provided to the Superintendent, the Superintendent is unable to conclude there has been an error in calculating his pension.

Composition of the Board of Trustees

11. Mr. Jaik also claims that the Board has not been properly constituted and that its actions are unauthorized.
12. The composition of the Board is set out in section 3.1 of the Trust Agreement:

3.01 Trustees

The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Union and the Trustees appointed by the Electrical Contractors' Association of Ottawa. The number of Trustees shall be eight (8), each of four (4) of whom shall be Union Trustees and the remaining four (4) shall be Employer Trustees.

13. Under section 21.01 of the Plan Document the Administrator of the Plan is the Board in accordance with the terms of the Collective Agreement and Trust Agreement.

14. Section 21.02 of the Plan Document, as restated in Amendment 6, effective January 1, 1994 similarly provides:

21.02 Board of Trustees

The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Union and the Trustees appointed by the Electrical Contractors' Association of Ottawa. The number of Trustees shall be eight (8), each of four (4) of whom shall be Union Trustees and the remaining four (4) shall be Employer Trustees.

15. The composition of the Board has been in compliance with the Trust Agreement, and the Plan Document (as restated by amendment 6), at all material times. All amendments to the Trust Agreement and Plan Document have been made by the duly constituted Board and are therefore valid.
16. The Superintendent does not in any event have the authority to invalidate decisions of a Board of a Pension Plan even if the Board were not validly constituted.
17. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY
REFUSE TO MAKE THE ORDER REQUESTED,
AS PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, January 28th, 2004.

K. David Gordon,
Deputy Superintendent, Pension Division



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services, under section 89(2) of the Act, to Refuse to Make an Order pursuant to section 87 of the Act respecting the **Bridgestone/Firestone Canada Inc.**

**Pension Plan — 1992, Registration No.
251348;**

TO: **Mr. Ron Ford**

464 Johnson St.
Midland ON L4R 2Y6

Applicant

AND TO: **Bridgestone/Firestone
Canada Inc.**

5770 Hurontario Street, Suite 400
Mississauga ON L5R 3G5

Attention: Ms. Andrea Imanse,
Director, Human Resources
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87 of the Act requiring the payment of a disability benefit to Ronald Ford (the "Applicant") from the Bridgestone/Firestone Canada Inc. Pension Plan — 1992, Registration No. 251348 (the "Firestone Plan").

REASONS FOR THE PROPOSAL TO REFUSE:

1. The Applicant was employed by Decor Metal Products, a Division of Firestone Inc. ("Decor"). As such, the Applicant was a member of the Pension Plan for Hourly-Rated Employees of Decor Metal Products, A Division of Firestone Canada Inc., Reg. No. C4973 (the "Decor Plan"), a predecessor to the Firestone Plan. He was also a member of a bargaining unit represented by the bargaining agent now known as the

National, Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW").

2. Article 21.3 of the collective agreement between Decor and the CAW covering the Applicant's employment (the "collective agreement") states that "[t]he Employer will provide a Pension as described in the booklet entitled — 'Information — Pension Plan for Hourly-Rated Employees' [the "Booklet"]." The term of the collective agreement containing Article 21.3 is November 17, 1983 to November 14, 1986.
3. Section 6(c) of the Decor Plan effective January 9, 1973 as amended to December 1, 1977 and dated February 1978, states that a member who attains age 55 and completes 10 years of continuous service is entitled to a disability benefit in the event that the member becomes permanently and totally disabled.
4. Section 10 of the Decor Plan contains the power to amend the Plan. In its entirety, section 10(a) reads as follows:

The Company expects to continue this Plan indefinitely but, subject to the provisions of any collective bargaining agreement then in effect, the Company reserves the right to amend or terminate the Plan at any time, provided, however, that no amendment shall make it possible for any part of the assets of the Pension Trust Fund to be used for, or diverted to, any purposes other than for the exclusive benefit of Members and the necessary operation of the Pension Trust Fund.

5. TRW Canada Ltd. ("TRW") purchased Decor from Firestone Canada Inc. (Firestone Canada Inc. and its successor Bridgestone/Firestone Canada Inc. shall be referred to as "Firestone") on June 29, 1984. The



Applicant was transferred to TRW as a result of the sale.

6. Under a resolution of the Firestone Board of Directors effective June 29, 1984 and dated October 30, 1984 (the "Resolution"), Firestone was to assume responsibility for the pension benefits accrued to June 29, 1984 under the Decor Plan and further accruals of pension benefits after that date under the Decor Plan were to cease. Firestone was also to transfer all assets and liabilities of the Decor Plan to the predecessor of the Firestone Plan (i.e. the Firestone Canada Inc. Contributing Retirement Income Plan — 1972) which had been established and maintained by Firestone at the time of the Resolution.
7. Under the terms of the Resolution, continuous service of a member of the Decor Plan with TRW on and after June 30, 1984 was to "count for vesting and eligibility for early retirement and disability retirement purposes under the terms of the Decor [Plan] applicable to each Member."
8. The Resolution also amends the terms of the Decor Plan relating to disability benefits (the "Amendment"). The Amendment states that provided that the current collective agreement has not expired on the member's disability retirement date, the member will be entitled to a disability benefit calculated in accordance with the benefit formula in the Decor Plan as at June 29, 1984 and accrued to June 29, 1984. The Amendment also states that where the collective agreement has expired on the member's disability retirement date no disability benefit shall be payable from the Decor Plan.
9. The Applicant became 55 in 1997 and he continued to be employed by TRW until 1999 when he became disabled. The

Applicant requested the payment of a disability benefit under the Firestone Plan and in respect of his service to June 29, 1984 with Decor.

10. The Applicant is not entitled to a disability benefit because the Decor Plan (and hence the Firestone Plan) was validly amended by the Amendment to remove entitlement to the disability benefit. The Resolution was passed before the Applicant met the requirements for receipt of the disability benefit because the Applicant was not 55 years old and was not disabled at the time of the Amendment. Therefore, the Amendment does not violate the Act.
11. The Amendment to the disability pension provision of the Decor Plan did not conflict with the collective agreement. The Booklet, and not the actual Decor Plan text, was referenced in the collective agreement. Thus, Firestone was free to amend the Decor Plan text provided the terms of the Decor Plan remained consistent with the terms of the Booklet during currency of the collective agreement. The Amendment explicitly retained the disability benefit until the expiry of the collective agreement and was, therefore, consistent with the requirements of the collective agreement.
12. Any entitlements to a disability benefit that the Applicant may have had did not survive the expiry of the collective agreement because the Applicant did not have a vested or accrued right to a disability benefit prior to the expiry of the collective agreement. Entitlement to the disability benefit did not vest because the Applicant was not 55 years of age and was not disabled at the time of the expiry of the collective agreement.
13. Such and further reasons as may come to my attention.



YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY
REFUSE TO MAKE THE ORDER PRO-
POSED IN THIS NOTICE.**

DATED at North York, Ontario, this 18th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. **CAW**

205 Placer Court
Toronto, Ontario
M2M 3H9

Attn: Mr. Lewis Gottheil,
Legal Counsel

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Notices of Proposal to Refuse to Consent to Applications for Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under ss. 78(1) of the Act submitted by Gardena Canada Ltd. in respect of the **Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777 (the "Plan")**;

TO: **Gardena Canada Ltd.**
100 Summerlea Road
Brampton ON L6T 4X3

Attention: Mr. Jay Sterling,
President
**Employer and Administrator
of the Plan**

NOTICE OF PROPOSAL TO REFUSE TO CONSENT TO APPLICATION

I PROPOSE TO REFUSE TO CONSENT to the application dated March 13, 2002, submitted by Gardena Canada Ltd. for the payment of surplus on the wind up of the Plan to the Employer under subsection 78(1) of the Act.

REASONS FOR PROPOSED REFUSAL:

1. The Plan is a non-contributory defined benefit plan established by Melnor Manufacturing Ltd. ("Melnor") effective July 1, 1970 as Melnor Manufacturing Limited Retirement Income Plan (the "1970 Plan").
2. The Plan was funded through a trust agreement made between Beatrice Foods Co. ("Beatrice") and National Trust Company, Limited, dated July 1, 1970 (the "1970 Trust").
3. On November 23, 1992, the name of Melnor was changed to Melnor Canada Ltd. and on October 1, 1997, Melnor became a division of Gardena Canada Ltd., which assumed Melnor's obligations under the Plan.

4. Under the terms of the 1970 Plan, contributions to the Plan were paid into a Trust Fund. The contributions together with the profits of the Trust Fund were held in trust for the purpose of providing retirement benefits to certain employees of Beatrice's Canadian subsidiaries and/or affiliates. Melnor was an affiliate or subsidiary of Beatrice.
5. The Trust Fund was administered in accordance with the terms of the 1970 Trust. The rights and benefits of "Participants" under the 1970 Plan were subject to the terms and provision of the 1970 Trust and "Participants" as defined in the 1970 Plan refers to employees and does not include the Employer.
6. There is no clear statement in the 1970 Trust that makes the Employer a beneficiary or that incorporates the terms of the Plan by reference into the 1970 Trust.
7. The 1970 Trust does not provide for the distribution of surplus on the termination of the Plan. However, the 1970 Plan provides for the payment of surplus to the Employer on the termination of the Plan. Therefore, the terms of the 1970 Plan are inconsistent with the terms of the 1970 Trust, and as a result, the terms of the 1970 Trust prevail. Therefore, the Employer is not entitled to payment of surplus from the Trust Fund.
8. Under the terms of the 1970 Trust, the Employer reserved to itself the power to amend and terminate the Trust Agreement, however this did not permit the Employer to use or divert any part of the Trust Fund for purposes other than for the benefit of employees or to revoke the 1970 Trust. Therefore, the provisions of the 1970 Trust prevail over any subsequent amendments.



and inconsistent provisions in the Plan or trust agreement which purport to give the Employer a right to any surplus that might exist upon the wind up of the Plan.

9. Therefore the Employer has not demonstrated that it has complied with section 79(3)(b) of the Act which requires that the Plan provide for payment of surplus to the Employer on wind up of the Plan.
10. Section 78(2) of the Act requires that an employer who applies to the Superintendent for consent to payment of surplus to the employer must transmit notice of the application containing the prescribed information to, *inter alia*, each member and each former member of the plan and to any other individual who is receiving payments out of the pension fund. Section 28(5)(f) of Regulation 909, R.R.O. 1990 as amended ("the Regulation") requires that notice under section 78(2) of the Act include "the contractual authority for surplus reversion." The Financial Services Commission of Ontario (FSCO) Policy S900-509 entitled "Application by an Employer for Payment of Surplus from a Wound-Up Plan" effective April 2, 2001, states that section 28(5)(f) of the Regulation requires that "The Notice of Surplus application must also include a complete historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust."

11. The Employer has not included in the Notice of Surplus application a complete historical analysis of all the Plan and trust and other documents that may be relevant to determine whether the Plan constitutes a trust.
12. Therefore, the Employer has not demonstrated that it has complied with section 78(2) of the Act and subsection 28(5) of Regulation 909 R.R.O. 1990, as amended.
13. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING

before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, or toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY
REFUSE TO CONSENT TO THIS APPLICA-
TION, AS PROPOSED IN THIS NOTICE
OF PROPOSAL.**

DATED at North York, Ontario, this 19th day
of December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



Notices of Proposal to Make a Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration Number 283358** (the "Plan");

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant
Appointed Administrator of the Plan

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President Finance
Employer

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-President
Trustee in Bankruptcy

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Peterborough Paper Converters Inc., is registered under the Act as Registration Number 283358 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 16, 2002; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on December 12, 2003 to make an order that the Plan be wound up effective February 1, 2002 through March 8, 2002; and
5. On December 5, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator's preliminary actuarial valuation of the Plan as at March 8, 2002 reveals a wind up funded ratio for the Plan of approximately 75% and a wind up deficit of approximately \$1.7 million; and

7. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 65% of the full benefit until further notice to reflect a further deterioration in the funded ratio of the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has estimated the wind up funded ratio of the Plan to be 75%.
2. The potential claim against the Guarantee Fund as at the wind up date estimated by the appointed Administrator is of the order of \$1,700,000.00.
3. The Employer, Peterborough Paper Converters Inc., was adjudged bankrupt on March 4, 2002.
4. The trustee in bankruptcy has advised the Administrator that there will not be any funds available to the Plan from the estate of the Employer.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 9th day of January, 2004.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522;**

TO: **PricewaterhouseCoopers Inc.**
PO Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Lois Reyes,
Human Resource Services
Administrator

AND TO: **Sealcraft Inc.**
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager
Employer
AND TO: Schwartz Levitsky Feldman Inc.
1167 Caledonia Road
Toronto ON M6A 2X1
Attention: Mr. Richard Kline
Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Sealcraft Inc. (the "Plan"), is registered under the Act as Registration Number 995522; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and

3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on December 23, 2002; and
4. On January 9, 2004, the Superintendent of Financial Services issued an Order that the Plan is to be wound up effective October 16, 2002; and
5. On January 16, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002, which report is currently under review by staff; and
6. On January 16, 2004, the Administrator also filed an Application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the Plan to be 52.1%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be \$410,800.00.
3. The Employer, Sealcraft Inc., was assigned into bankruptcy on October 28, 2002.
4. The trustee in bankruptcy for Sealcraft Inc. had advised the Administrator that there are no funds available for distribution to the ordinary unsecured creditors.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

6. If funds become available for the Plan from the estate of Sealcraft Inc., the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 10th day of February, 2004.

K. David Gordon,
Deputy Superintendent, Pensions

¹NOTE — PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



Orders that Pension Plans be Wound Up

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to **The Pension Plan for The Employees of RNG Equipment Inc., Registration Number 491126 (the "Plan")**;

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Domenic Muro,
Compliance Support Specialist
Appointed Administrator

AND TO: **RNG Equipment Inc.**
Bay Wellington Tower, BCE Place
181 Bay St.
Box 825, Suite 2040
Toronto ON M5J 2T3

Attention: Ms. Caryn McNeil,
Administrator

Employer

AND TO: **Blake, Cassels & Graydon LLP**
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Ms. Kathryn M. Bush

**Counsel for the Trustee
in Bankruptcy of
RNG Group Inc. (formerly
RNG Equipment Inc.)**

ORDER

On or about September 10, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 9, 2003, to Make an Order that the Plan be wound up in whole effective November 30, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective November 30, 2001.

REASONS:

1. There was a cessation of Employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 10th day of November, 2003.

Tom Golletto
Director, Pension Plans Branch
Financial Services Commission of Ontario



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the

Alderbrook Industries Limited Pension Plan, Registration Number 0574764 (the "Pension Plan");

TO: **Mackenzie Financial Corporation**
150 Bloor Street West
Suite M111
Toronto ON M5S 3B5

Attention: David Lin,
Pension Officer
Administrator of the Pension Plan

AND TO: **Alderbrook Industries Limited**
885 Sandy Beach Road
Pickering ON L1W 3N6

Attention: Linda Parker,
Human Resources Manager
Employer

ORDER

On the 20th day of October 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 20th day of October, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Alderbrook Industries Limited Pension Plan, Registration Number 0574764.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Alderbrook Industries Limited Pension Plan, Registration Number 0574764, be wound up in whole effective March 31, 2002, for the following reasons:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto ON M5J 2V1

Attention: Huey Lee,
Financial Advisory Services

Receiver and Manager of Alderbrook Industries Limited

AND TO: **Shiner Kidekel Zweig Inc.**
10 West Pearce Street
Suite 4
Richmond Hill ON L4B 1B6



Attention: Joel Kideckel

**Trustee in Bankruptcy of
Alderbrook Industries
Limited**

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Gelfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Registered Pension Plan for Cunningham Foundry, A Division of Quint Industries Inc., Registration Number 0432450** (the "Pension Plan");

TO: Maritime Life Assurance Company
7 Maritime Place
PO Box 1030
Halifax NS B3J 2X5

Attention: Kari LeLacheur,
Legislative Advisor,
Pension Services
**Administrator of the
Pension Plan**

AND TO: Cunningham Foundry,
A Division of Quint
Industries Inc.
21 Yale Cres.
St. Catharines ON L2R 2Y6

Attention: Brian Crawford,
Chief Financial Officer
Employer

ORDER

On the 22nd day of September 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 22nd day of September, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Registered Pension Plan for Cunningham Foundry, A Division of Quint Industries Inc., Registration Number 0432450, be wound up in whole effective July 31, 2002, for the following reasons:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Inc.
PO Box 976
21 King Street West, Suite 510
Hamilton ON L8N 3R1

Attention: John Athanasiou,
Corporate Recovery Specialist
**Trustee in Bankruptcy of
Cunningham Foundry,
A Division of Quint
Industries Inc.**



AND TO: CAW Local 523

16 Steel Street
Welland ON L3B 3L9

Attention: Gord Chatwin
Union

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to an Application under 78(1) of the Act submitted by Weavexx Corporation, in respect of the **Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration No. 0264655** (the "Plan");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the Plan passed by the Board of Directors of Weavexx Corporation on September 23, 1999 (the "Plan Amendment");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Approve the Wind Up Report submitted by Weavexx Corporation in respect of the Plan dated September 5, 1997 (the "Report");

AND IN THE MATTER OF a Notice of Proposal to issue an Order under section 88 of the Act;

AND AS PURSUANT TO a Transfer and Assignment of Pension Plan agreement entered into between Weavexx Corporation and BTR Canada Inc. on December 2, 1999 under which BTR Canada Holdings Inc. became the Employer and Administrator of the Plan;

AND AS PURSUANT TO a Transfer and Assignment agreement entered into between BTR Canada Holdings, Inc. and BTR Canada Finance Inc. on March 1, 2003 under which BTR Canada Finance Inc. is now the Employer and Administrator of the Plan.

TO:

BTR Canada Finance Inc.

c/o Ms. Allyn Jerome
Benefit Specialist
Invensys Inc.
33 Commercial St. B52-S1
Foxboro MA 02035

**Employer and Administrator
of the Plan**

ORDER

On or about May 30, 2003, the Superintendent of Financial Services ("Superintendent") issued a Notice of Proposal (the "Notice of Proposal") to the Administrator of the Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, wherein he proposed to:

1. **REFUSE TO CONSENT** to the application dated September 22, 1999 submitted by Weavexx Corporation for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act (the "Application");
2. **REFUSE TO CONSENT** to register the Plan Amendment dated September 23, 1999;
3. **REFUSE TO APPROVE** the wind up report dated September 5, 1997, pursuant to subsection 70(5) of the Act; and
4. **ORDER** that the Administrator of the Plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the "1957 Plan" (The New Retirement Income Plan for the Employees of Kenwood Mills Limited, established in 1957 by a predecessor employer), and the "1958 trust agreement" (a predecessor plan trust agreement entered into between Kenwood Mills Limited and the Montreal Trust Company dated March 21, 1958) by providing for the distribution of the surplus plan assets to members, former members,



and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act;

ON July 3, 2003, BTR Canada Finance Inc. filed a request for hearing with the Financial Services Tribunal (the "Tribunal");

ON November 12, 2003, BTR Canada Finance Inc. withdrew its request for a hearing by the Tribunal.

I THEREFORE:

- 1. REFUSE TO CONSENT** to the application dated September 22, 1999 submitted by Weavexx Corporation for the payment of surplus on the wind up of the Plan to the Employer under subsection 78(1) of the Act;
- 2. REFUSE TO CONSENT TO** register the Plan Amendment dated September 23, 1999;
- 3. REFUSE TO APPROVE** the wind up report dated September 5, 1997 pursuant to subsection 70(5) of the Act;
- 4. ORDER** that the Administrator of the Plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the 1957 Plan, and the 1958 trust agreement by providing for the distribution of the surplus plan assets to members, former members, and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act.

The new wind up report shall be delivered to the Superintendent within 60 days of the date of this Order.

DATED at North York, Ontario, December 3rd, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Copy: Mr. Paul Timmins,
Watson Wyatt Canada
Ms. Dona Campbell,
Sack Goldblatt Mitchell
Ms. Alexandra Dagg,
Union of Needletrades,
Industrial & Textile Employees — CLC



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232967** (the "Plan");

TO: **Morneau Sobeco**
 895 Don Mills Road, Suite 700
 One Morneau Sobeco Centre
 Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher,
 Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
 100 Sea-Horse Drive
 Waukegan IL 60085

Attention: Ms. Darlene Lomax,
 Manager Benefits Administration
Employer

AND TO: **Alex D. Moglia & Associates**
 1325 Remington Rd. STE H
 Schaumburg IL 60173

Attention: Mr. Alex D. Moglia
Trustee in Bankruptcy

AND TO: **Ernst & Young**
 35 Metcalfe Street, Suite 1600
 Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Receiver

ORDER

On or about October 16, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 16, 2003 to Make an Order that the Plan be wound up in whole effective August 1, 2000 through December 20, 2000, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective August 1, 2000 through December 20, 2000.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 11th day of December, 2003.

Tom Golfetto,
 Director, Pension Plans Branch
 By Delegated Authority from
 the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232975** (the "Plan");

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher,
Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax,
Manager Benefits Administration
Employer

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Receiver

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumburg IL 60173

Attention: Mr. Alex D. Moglia
Trustee in Bankruptcy

ORDER

On or about October 16, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 16, 2003 to Make an Order that the Plan be wound up in whole effective August 1, 2000 through April 9, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective August 1, 2000 through April 9, 2001.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 17th day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
By Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339** (the "Pension Plan");

TO: Sun Life Assurance Company of Canada

227 King Street South
Waterloo ON N2J 4C5

Attention: Lisa Wroblewski,
Account Representative
**Administrator of the
Pension Plan**

AND TO: General Publishing Co. Limited

895 Don Mills Road
Suite 400, 2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey,
Administrator
Employer

ORDER

On the 7th day of November, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 7th day of November, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Registered Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0968339, be wound up in whole effective August 20, 2002, for the following reasons:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
79 Wellington Street West
P.O. Box 1900
Toronto Dominion Centre
Toronto ON M5K 1B9

Attention: Rob Biehler,
Vice-President

**Trustee in Bankruptcy for
General Publishing Co.
Limited**

DATED at Toronto, Ontario, this 9th day of January, 2004.

Tom Galfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Salaried Employees of MIL Systems Engineering, Registration Number 684902 (the "Plan")**;

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Sharon A. Carew,
Senior Manager
Appointed Administrator

AND TO: **MIL Systems Engineering**
1150 Morrison Drive
Suite 200
Ottawa ON K2H 8S9

Attention: Mr. Garry M. Skinner,
VP Finance & Administration
Employer

AND TO: **Groupe Thibault Van Houtte & Associes Ltee**
70 Rue Dalhousie, Bureau 100
Quebec City, Quebec G1K 4B2

Attention: Mr. Patrice Van Houtte
Trustee in Bankruptcy

ORDER

On or about September 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 17, 2003, to Make an Order that the Plan be wound up in whole effective November 2, 2001, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective November 2, 2001.

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to clause 69(1)(d) of the Act.

DATED at North York, Ontario, this 9th day of January, 2004.

Tom Golletto,
Director, Pension Plans Branch
Financial Services Commission of Ontario



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522 (the "Plan")**;

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes,
Manager
Appointed Administrator

AND TO: **Sealcraft Inc.**
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager
Employer

AND TO: **Schwartz Levitsky Feldman Inc.**
1167 Caledonia Road
Toronto ON M6A 2X1

Attention: Mr. Richard Kline
Trustee in Bankruptcy

ORDER

On or about September 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated September 17, 2003, to Make an Order that the Plan be wound up in whole effective October 16, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective October 16, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to clause 69(1)(d) of the Act.

DATED at North York, Ontario, this 9th day of January, 2004.

Tom Goltetto,
Director, Pension Plans Branch
Financial Services Commission of Ontario



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting

Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183 (the "Pension Plan");

TO: London Life Insurance Company
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist
Group Retirement Services
Administrator of the Pension Plan

AND TO: Cobra Machine Tool co. Inc.
11600 County Road 42
R.R. #2
Tecumseh ON N8N 2M1

Attention: Charles Roberts,
General Manager
Employer

ORDER

On the 7th day of November 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 7th day of November, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Employees Retirement Plan of Cobra Machine Tool Co. Inc., Registration Number 1018183, be wound up in whole effective May 10, 2002, for the following reasons:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
- 3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Inc.
140 Fullarton Street
Suite 1200
P.O. Box 2305
London ON N6A 5P2

Attention: Stephen N. Cherniak, CA, CIRP
Vice President

Trustee in Bankruptcy of Cobra Machine Tool Co. Inc.

DATED at Toronto, Ontario, this 12th day of January, 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of
Proposal issued by the Superintendent of
Financial Services to Refuse to Make an Order
under section 87(1) of the Act respecting the
**de Havilland/Brad Salaried Employees
Pension Plan, Registration No. 241174**
(the "Salaried Plan");

TO: **Mr. R.N. Priest**
627 The West Mall, Suite 309
Toronto ON M9C 4X5

Applicant

AND TO: **Bombardier Inc.**
123 Garratt Blvd.
Downsview ON M3K 1Y5

Attention: Mr. Andrew Ng,
Pension Specialist

**Employer and Administrator
of the Salaried Plan**

ORDER

On or about the 10th day of December, 2003,
the Superintendent of Financial Services (the
"Superintendent") issued a Notice of Proposal
(the "Notice of Proposal") to the Applicant and
the Administrator of the Salaried Plan, Registration
No. 241174, wherein he proposed to:

- 1. REFUSE TO MAKE AN ORDER** under section 87(1) of the Act directing Bombardier Inc. (the "Employer") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time frame prescribed by subsection 89(6) of the Act.

THEREFORE the Superintendent:

REFUSES TO MAKE AN ORDER under section 87(1) of the Act directing Bombardier Inc. (the "Employer") to transfer pension funds out of the Salaried Plan to a LIRA account of the Applicant.

DATED at Toronto, Ontario, this 29th day of January 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");
AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218;**

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin
Administrator

AND TO: **Pelee-Delta Electric Inc.**
P.O. Box 2049
Sarnia Stn. Main
Sarnia ON N7T 7L3

Attention: Ms. Paula Pope
Employer

AND TO: **Funtig & Associates Inc.**
484 Pelissier St.
Windsor ON N9A 4K9

Attention: Mr. Peter Wasyluk
Trustee in Bankruptcy

ORDER

On or about the 1st day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated November 25, 2003, to Make an Order pursuant to subsection 69(1) of the Act, that the Revised Pension Plan for Employees of Pelee-Delta Electric Inc., Registration Number 363218 (the "Plan"), be wholly wound up effective November 13, 2001.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective November 13, 2001.

REASONS:

1. There was a cessation or suspension of contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. There was a failure of the Employer to make contributions to the pension fund pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada) pursuant to clause 69(1)(c) of the Act.

DATED at Toronto, Ontario, this 29th day of January, 2004.

Tom Goltetto,
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*,

R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration No. 283358 (the "Plan")**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant
Administrator

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President, Finance
Employer

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer
Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-president
Trustee in Bankruptcy

ORDER

On or about the 12th day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Plan be wholly wound up effective February 1, 2002 through March 8, 2002.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective February 1, 2002 through March 8, 2002.

REASONS:

1. Cessation or suspension of the Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Pension Plan have ceased to be employed by the Employer as a result of the discontinuance or reorganization of all or part of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at Toronto, Ontario, this 29th day of January, 2004.

Tom Golletto,
Director, Pension Plans Branch



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **Pension Plan for Bono Construction Limited, Registration Number 0499608 (the "Pension Plan")**;

TO: **The Canada Life Assurance Company**
330 University Avenue
Toronto ON MSG 1R8

Attention: Milica Stojsin,
Plan Wind-up Consultant
Investments & Pensions
Administrator of the Pension Plan

AND TO: **Bono General Construction Limited**
899 Nebo Road
R.R. #2, P.O. Box 51
Hannon ON L0R 1P0

Attention: Joe Muraca,
Office Manager
Employer

ORDER

On the 12th day of December, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 12th day of December, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Pension Plan for Bono Construction Limited, Registration Number 0499608.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Bono Construction Limited, Registration Number 0499608, be wound up in whole effective December 31, 2000, for the following reasons:

- 1. There was a cessation or suspension of Employer contributions to the pension fund.**
- 2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
- 3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
- 4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Clark Lonergan
Trustee in Bankruptcy for Bono General Construction Limited

DATED at Toronto, Ontario, this 9th day of March, 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the

Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723;

TO: **Halliburton Group Canada Inc.**
 333 – 5th Avenue S.W.
 Suite 1000
 Calgary, Alberta
 T2P 3B6

Attention: Mr. Ron Ruckaber,
 Senior Benefits Advisor

Applicant and Employer

CONSENT

On or about October 29, 2003, the Superintendent of Financial Services caused to be served on Halliburton Group Canada Inc. a Notice of Proposal dated October 29, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723 (the "Plan"), to Halliburton Group Canada Inc. in the amount of \$932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

The Notice of Proposal was served on the Applicant only. The Applicant has certified that they are not requesting, nor will request a hearing as prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Dresser Canada, Inc.

Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration Number 0220723, of \$932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan, to Halliburton Group Canada Inc.

DATED at Toronto, Ontario, this 13th day of November, 2003.

Tom Golletto,
 Director, Pension Plans Branch
 by Delegated Authority from
 the Superintendent of Financial Services
 c.c. Mr. Greg Winfield, McCarthy Tetrault



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346;**

TO: **Halliburton Group Canada Inc.**
333 – 5th Avenue S.W.
Suite 1000
Calgary, Alberta
T2P 3B6

Attention: Mr. Ron Ruckaber,
Senior Benefits Advisor
Applicant and Employer

CONSENT

On or about October 29, 2003, the Superintendent of Financial Services caused to be served on Halliburton Group Canada Inc. a Notice of Proposal dated October 29, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346 (the "Plan"), to Halliburton Group Canada Inc. in the amount of \$139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

The Notice of Proposal was served on the Applicant only. The Applicant has certified that they are not requesting, nor will request a hearing as prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration Number 0474346, of \$139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan, to Halliburton Group Canada Inc.

DATED at Toronto, Ontario, this 13th day of November, 2003

Tom GOLFETTO,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Mr. Greg Winfield, McCarthy Tetrault

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457**;

TO: **Atlas Copco Canada Inc.**
Secoroc, a Division of
Atlas Copco Canada Inc.
1157 Blair Road
Burlington ON L7M 1P9

Attention: Mr. Jeff Hagar,
Vice President Finance
Applicant and Employer

CONSENT

On or about October 17, 2003, the Superintendent of Financial Services caused to be served on Atlas Copco Canada Inc. a Notice of Proposal dated October 17, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457 (the "Plan"), to Atlas Copco Canada Inc. in the amount of \$703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457, of \$703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment, to Atlas Copco Canada Inc.

THIS CONSENT IS EFFECTIVE ONLY

AFTER the Applicant satisfies me that provision has been made for the pension benefits of one unlocated Plan member and that the employees' share of the surplus has been distributed to the members, former members and others as set out in the application.

DATED at Toronto, Ontario, this 1st day of December, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Copy: Mr. Leon Caron,
Atlas Copco Canada Inc.
Ms. Susan L. Nickerson,
McMillan Binch LLP
Mr. Michael Mazzuca,
Koskie Minsky

IN THE MATTER OF The Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998;**

TO: **PricewaterhouseCoopers Inc.**
c/o Ayesworth Thompson
Phelan O'Brien
222 Bay Street
Ernst & Young Tower
PO Box 124, 18th Floor
Toronto Dominion Centre
Toronto ON MSK 1H1

Attention: Peter R. Welsh
Applicant

CONSENT

On or about October 20, 2003, the Superintendent of Financial Services caused to be served on PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc., a Notice of Proposal dated October 20, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the **AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998** (the "Plan"), to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate AM International Inc. in the amount of \$154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998, of \$154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment, to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the payment of members' share of the negotiated surplus has been paid.

DATED at Toronto, Ontario, this 9th day of December, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
cc: Tony Karkheck, PricewaterhouseCoopers Inc.
cc: Dona Campbell, Sack Goldenblatt Mitchell

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited Registration Number 0355404**;

TO: **United Dominion Industries Corporation**
c/o Mr. Jeffrey L. Nugent
SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277
U.S.A.

Attention: Jeffrey L. Nugent
Applicant and Employer

CONSENT

On or about October 31, 2003, the Superintendent of Financial Services caused to be served on United Dominion Industries Corporation an amended Notice of Proposal dated October 31, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration number 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of \$2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the Plan and the distribution of surplus.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration Number 0355404, of \$2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the Plan and the distribution of surplus to United Dominion Industries Corporation.

THIS CONSENT IS EFFECTIVE ONLY
AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 18th day of December, 2003.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP
Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095**;

TO: **Rail Europe Group Inc.**
44 South Broadway
White Plains, New York 10601
Attention: Mr. Duncan Still,
Chief Financial Officer
Applicant and Employer

CONSENT

On or about October 31, 2003, the Superintendent of Financial Services caused to be served on Rail Europe Group Inc. a Notice of Proposal dated October 31, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095 (the "Plan"), to Rail Europe Group Inc. in the amount of \$644,801.24, as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

NO NOTICE requiring a hearing was delivered to the *Financial Services Tribunal* by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Britrail Travel International (Canada) Retirement Plan, Registration Number 0404095, of \$644,801.24, as at June 30, 1996, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me in writing of the distribution of the members' share of surplus in accordance with the Surplus Distribution Agreement.

DATED at Toronto, Ontario, this 9th day of January, 2004.

Tom Galfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Ms. Reesha Hosein,
Blake, Cassels & Graydon LLP
Ms. Lorraine Mahoney,
Allan Smart Services
Mr. Robert Southern



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479**;

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager

Applicant and Employer

CONSENT

On or about December 19, 2003, the Superintendent of Financial Services caused to be served on ExxonMobil Chemical Films Canada Ltd. a Notice of Proposal dated December 19, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479** (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of \$800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind-up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the Surplus Distribution Agreement).

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479**, of \$800,000, to ExxonMobil Chemical Films Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 10th day of February, 2004.

Tom Goltfatto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Evan Howard, Osler Hoskin & Harcourt LLP
Ari Kaplan, Koskie Minsky



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479**;

TO: **ExxonMobil Chemical Films Canada Ltd.**
321 University Avenue
Belleville, Ontario K8N 5A2

Attention: Robert Hallsworth,
Plant Manager
Applicant and Employer

AMENDED CONSENT

On or about December 19, 2003, the Superintendent of Financial Services caused to be served on ExxonMobil Chemical Films Canada Ltd. a Notice of Proposal dated December 19, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479 (the "Plan"), to ExxonMobil Chemical Films Canada Ltd. in the amount of \$800,000 estimated as at October 31, 1986, plus investment returns thereon to the date of payment less half of the expenses associated with the wind-up of the Plan and distribution of surplus therefrom, as contemplated by the surplus sharing agreement, dated March 26, 2003 (the Surplus Distribution Agreement).

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Mobil Chemical Canada, Ltd. Pension Plan for Salaried Employees of Coatings Division, Registration Number 0567479, of \$800,000 estimated as at October 31, 1986 plus investment returns thereon to the date of payment less half of the expenses associated with the wind up of the Plan and distribution of surplus therefrom, as contemplated by the Surplus Distribution Agreement, to ExxonMobil Chemical Films Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY

AFTER the Applicant satisfies me that all payments to which members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of February, 2004.

Tom Galfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services
c.c. Evan Howard, Osler Hoskin & Harcourt LLP
Ari Kaplan, Koskie Minsky



Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the Pension Benefits Act

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration Number 283358 (the "Plan")**;

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant

Appointed Administrator of the Plan

AND TO: **Peterborough Paper Converters Inc.**
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President Finance
Employer

AND TO: **PricewaterhouseCoopers Inc.**
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-President
Trustee in Bankruptcy

AND TO: **Sack Goldblatt Mitchell**
20 Dundas Street West, Suite 1130
PO Box 180
Toronto ON M5G 2G8

Attention: Mr. Michael Kainer

Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Peterborough Paper Converters Inc., is registered under the Act as Registration Number 283358 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 16, 2002; and
4. On January 29, 2004, the Superintendent of Financial Service issued an Order that the Plan be wound up effective February 1, 2002 through March 8, 2002; and
5. On December 5, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. On January 9, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the Notice of Proposal to Make the Declaration; and



8. The Administrator's preliminary actuarial valuation of the Plan as at March 8, 2002, reveals a wind up funded ratio for the Plan of approximately 75% and a wind up deficit of approximately \$1.7 million; and
9. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 65% of the full benefit until further notice to reflect a further deterioration in the funded ratio of the Plan; and
10. The Administrator is prepared to restore pensions to the level provided for under the Guarantee Fund provisions of the Act if the Guarantee Fund is declared to be applicable to the Plan;

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has estimated the wind up funded ratio of the Plan to be 75%.
2. The potential claim against the Guarantee Fund as at the wind up date estimated by the appointed Administrator is of the order of \$1,700,000.00.
3. The Employer, Peterborough Paper Converters Inc., was adjudged bankrupt on March 4, 2002.
4. The trustee in bankruptcy has advised the Administrator that there will not be any funds available to the Plan from the estate of the Employer.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario, this 9th day of March, 2004.

Tom Golgetto,
Director, Pension Plans Branch

Allocations of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act respecting the **Gallaher Thorold Paper Co. Salaried Pension Plan**, Registration No. 1039999 (the "Plan");

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant
**Appointed Administrator of
the Plan**

AND TO: **Gallaher Thorold Paper Co.**
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie,
Vice President, Human Resources
Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Mr. Felix Hsu,
Manager
**Trustee in Bankruptcy for
Gallaher Thorold Paper Co.**

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$731,700 determined as of August 1, 2003 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 14th day of November, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

ALLOCATION

WHEREAS on the 29th day of May, 2002, a declaration was issued pursuant to sections 83 and 89 of the Act that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P. 8, as amended by (the "Act");
AND IN THE MATTER OF a Proposal by the
Superintendent of Financial Services to Make a
Declaration under Section 83 of the Act respect-
ing the **Non-Contributory Pension Plan**
Covering Hourly Paid Bargaining Unit
Employees of Algoma Steel Inc. (the
"Pension Plan") Registration Number
0335802;

TO: Morneau Sobeco
1500 Don Mills Road
Toronto ON M3B 3K4
Attention: Mr. Robin Pond, MBA, CFA
Partner
Administrator of the
Pension Plan

SECOND INTERIM ALLOCATION

WHEREAS on December 17, 2002, I declared,
pursuant to sections 83 and 89 of the Act, that
the Pension Benefits Guarantee Fund (the
"Guarantee Fund") applies to the Pension Plan;
NOW THEREFORE I shall further allocate
from the Guarantee Fund and pay to the Pension
Plan, pursuant to subsection 34(7) of R.R.O.
1990, Reg. 909, under the Act (the "Regulation"),
an amount not to exceed \$34,400,000 (Second
Interim Allocation) which together with the
Ontario assets of the Pension Plan, will partially
provide for the benefits determined in accor-
dance with section 34 of the Regulation. Any
money allocated from the Guarantee Fund but
not required to provide such benefits shall be
returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 18th day of
December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P. 8, as amended by (the "Act");
AND IN THE MATTER OF a Proposal by the
Superintendent of Financial Services to Make
a Declaration under Section 83 of the Act
respecting the **Algoma Steel Inc. Salaried
Employees Pension Plan for Employees
in Canada (the "Pension Plan"), Registration
Number 0335810;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Robin Pond, MBA, CFA
Partner
**Administrator of the
Pension Plan**

SECOND INTERIM ALLOCATION

WHEREAS on December 17, 2002, I declared,
pursuant to sections 83 and 89 of the Act, that
the Pension Benefits Guarantee Fund (the
"Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate
from the Guarantee Fund and pay to the Pension Plan,
pursuant to subsection 34(7) of R.R.O.
1990, Reg. 909, under the Act (the "Regulation"),
an amount not to exceed \$8,600,000 (Second
Interim Allocation) which together with the
Ontario assets of the Pension Plan, will partially
provide for the benefits determined in accordance
with section 34 of the Regulation. Any
money allocated from the Guarantee Fund but
not required to provide such benefits shall be
returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 18th day of
December, 2003.

K. David Gordon,
Deputy Superintendent, Pensions





FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
McNairn , Colin (Vice-Chair) O.C. 1623/2001 O.C. 1809/98	June 20, 2001 July 8, 1998	June 19, 2004** July 7, 2001
Corbett , Anne (Vice-Chair Acting) O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe , Kevin O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal , Shiraz Y.M. O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman , Louis O.C. 439/2002 O.C. 2527/98 O.C. 1592/98	January 23, 2002 December 9, 1998 June 17, 1998	January 22, 2005** December 8, 2001 December 16, 1998
Gavin , Heather O.C. 440/2002 O.C. 11/99	January 23, 2002 January 13, 1999	January 22, 2005** January 12, 2002
Litner , Paul W. O.C. 1512/2002	September 9, 2002	September 8, 2005
Moore , C.S. (Kit) O.C. 1625/2001 O.C. 1591/98	June 20, 2001 July 1, 1998	June 19, 2004** June 30, 2001
Short , David A. O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent , J. David O.C. 2119/2001	October 24, 2001	October 23, 2004**

**Or on the day FSCO/OSC merges, if earlier



Pension Hearings Before the Financial Services Tribunal

**Crown Cork & Seal Canada Inc.,
Registration Numbers 474205, 595371 &
338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205, and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties were unable to resolve the issues in this matter. At the pre-hearing conference on May 12, 2003, the parties stated they would contact the Registrar to resume the pre-hearing conference if they did not resolve the issues at a settlement meeting on May 26, 2003. On June 20, 2003, the parties advised that they expect the settlement discussions to continue.

**The Corporation of the City of Kitchener
Pension Plan for Fire Department
Employees, Registration Number 239475,
FST File Number P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003. At the hearing on July 14, 2003, the panel reserved its decision.

**Marcel Brousseau, Electrical Industry
of Ottawa Pension Plan, Registration
Number 0586396, FST File Number
P0183-2002;**

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case.

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, were published in Volume 13, Issue 1 of the Pension Bulletin.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

On December 17, 2003, an application for party status was filed by the Board of Trustees, Electrical Industry of Ottawa Pension Plan. At a resumption of the pre-hearing conference on January 12, 2004, full party status was granted, and the hearing dates were changed. At the hearing on March 30, 2004, the panel reserved its decision.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan and to;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust (the "Second Proposal").

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.



On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

Evidence was heard on October 27-29, 2003 and on January 7-8, 2004 and oral argument took place on January 26, 2004. In its Reasons For Decision dated March 4, 2004, the Tribunal ordered the Superintendent to carry out the First Proposal contained in the Notice of Proposal with the modification that the amounts to be reimbursed (with foregone income thereon) should be specified as per the direction of the Tribunal. The Tribunal also ordered the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal. The Reasons For Decision dated March 4, 2004, are published in this bulletin on page 132.

On March 30, 2004, the DCA Employees Committee filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice

of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry

(Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter. On April 8, 2004, oral arguments will take place.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.). At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada.

On May 12, 2003, a motion for disclosure brought by the Applicant was heard. The motion was dismissed.

The hearing was held on July 2, 2003, September 22, and 25, 2003. In its reasons dated January 9, 2004, the Tribunal directed the Superintendent, by order, to carry out the Notice of Proposal. The Reasons for Decision dated January 9, 2004, are published in this bulletin on page 118.

On February 6, 2004, the Applicant filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).



**Slater Stainless Corp. Pension Plan for
Slater Stainless Corp. Members of the
National Automobile Aerospace,
Transportation and General Workers
Union of Canada (CAW-Canada),
Registration Number 561456, FST File
Number P0220-2003;**

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

**Slater Stainless Corp. Pension Plan for
Slater Stainless Corp. Members of the
United Steel Workers of America (Local
7777), Registration Number 561464,
FST File Number P0221-2003;**

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

**Bestfoods Canada Inc., Pension Plan
for Salaried Employees of Bestfoods
Canada Inc., Registration Number
240358, FST File Number P0222-2003;**

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up, in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an application for party status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. The motion hearing scheduled for September 22, 2003, was rescheduled to November 3, 2003, at the request of the parties. At the end of the hearing on the motion, the Tribunal made Orders framing the issues in the proceeding, establishing the requirements for giving notice of the main hearing and requiring disclosure by Unilever Canada Inc. and the Superintendent of certain material relevant to the issues in the proceeding.



On January 22, 2004, the Tribunal heard argument from the parties on a request by Unilever Canada Inc. for an order separating certain jurisdictional and standing issues for preliminary determination by the Tribunal. That request was denied, the Tribunal confirming its earlier decision to receive any evidence and hear argument on those issues, along with evidence and argument on the other issues, at the main hearing in this proceeding.

On March 2, 2004, the Tribunal granted the parties' request to defer the disclosure date, and adjourn the March 8, 2004 pre-hearing conference return date, as the parties are engaged in settlement discussions.

Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003;

On October 7, 2003, Trustees of the Boilermakers' National Pension Plan (Canada) (the "Plan") requested a hearing regarding the Superintendent's Notice of Proposal dated September 22, 2003. By the terms of the Notice of Proposal, the Superintendent proposes to:

- revoke or refuse to register certain amendments to the Plan which provide that a member is deemed not to be retired unless he or she has withdrawn from employment in the construction industry, or to reduce an early retirement benefit for a member who is re-employed by an employer not participating in the Plan, on the grounds that these amendments impose additional requirements for, or restrictions on the continued receipt of, early retirement benefits in breach of s. 40(2) of the *Pension Benefits Act* (the "Act");
- direct the trustees of the Plan to cease requiring members who are retiring early to confirm that they will cease working in the boilermaker industry, on the grounds that no such requirement is set out in the Plan; and

- refuse registration of a Plan amendment that would allow a plan member to terminate membership in the Plan if contributions were not made on his or her behalf by a participating employer but only if the member withdraws from employment in the construction industry, on the grounds that this qualification would add a further condition to the right to terminate membership in contravention of s. 38(1) of the Act.

The pre-hearing conference was held on December 8, 2003. Hearing dates for the giving of evidence are scheduled on April 19, 20 and 21, 2004, and oral arguments will take place on June 14, 2004.

On February 4, 2004, the parties agreed to adjourn the matter *sine die* pending finalization of the terms of a settlement.

Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003;

On November 6, 2003, the Board of Trustees of Plumbers Local 463 Pension Plan Trust Fund requested a hearing with respect to an Order dated October 6, 2003 of the Deputy Superintendent, Pensions, under subsection 106(13) of the *Pension Benefits Act*. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of the reports prepared following the examination, investigation or inquiry referred to in paragraph (a) of the order.

At the pre-hearing conference on January 19, 2004, the parties agreed that the issue of the jurisdiction of the Tribunal to proceed with the hearing needed to be determined in a motion in advance of the hearing on the merits. The Superintendent's position is that there is no jurisdiction for the Tribunal to conduct a



hearing under section 89 of the Act where the Deputy Superintendent has issued an Order under subsection 106(13) of the Act. Further, the Superintendent states there is no express authority conferred upon the Tribunal by section 89 of the Act, nor is there any implied authority to conduct such a hearing. The motion is scheduled for April 15, 2004.

On February 26, 2004, the matter was adjourned *sine die* pending the outcome of an application by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.

Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, FST File Number P0233-2004;

On January 21, 2004, Gardena Canada Ltd. (the "Employer"), requested a hearing regarding the Notice of Proposal dated December 19, 2003 of the Deputy Superintendent, Pensions, to refuse to consent to the application dated March 12, 2002, submitted by the Employer for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

On February 25, 2004, an application for party status was filed by David Evans, a member of the Plan.

On March 4, 2004, applications for party status were filed by Raymond Bamsey, Ernest Burke, Pat Dobson, Leone Douglas, Gloria Dunn, Karen Garvey, Doreen Harding, Connie Heron, James Peter and Patricia Sinden, who are active, deferred vested and retired members of the Plan.

On March 19, 2004, an application for party status was filed by Kevin MacRae, a member of the Plan. On March 24, 2004, an application for party status was filed by Liviana Macoretta, a member of the Plan.

A pre-hearing conference is scheduled for May 6, 2004.

Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit; and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference is scheduled for May 25, 2004.

Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004-03-04;

On March 2, 2004, Coats Canada Inc. (the "Employer"), requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated February 5, 2004, to make an Order under section 69(1) of the Act, that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by the Employer and who ceased to be employed between July 1999, and December 31, 1999, as a result of:

- (i) the discontinuance of all or a part of the business of the Employer; or
- (ii) the discontinuance of all or a significant portion of the business carried on by the Employer at its Coats Paton Division

On March 4, 2004, the Applicant requested agreement from the Superintendent to adjourn this matter *sine die* pending the outcome of the Monsanto case. On March 12, 2004, the Superintendent agreed to the adjournment.

Ronald Ford, Bridgestone/Firestone Canada Inc., Pension Plan — 1992, Registration Number 251348; FST File Number P0238-2004;

On March 11, 2004, Ronald Ford, a member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated February 18, 2004, to refuse to make an Order pursuant to section 87 of the Act requiring the payment of a disability benefit to the Applicant from the "Firestone Plan."

On March 25, 2004, an application for party status was filed by Bridgestone/Firestone Canada Inc.

On April 6, 2004, an application for party status was filed by the CAW-Canada and its Local 1411. A pre-hearing conference is being scheduled.

The following cases are adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.

- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**

Matter continues to be adjourned *sine die* pending the outcome of the Monsanto case.

- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS," Registration Number 345983), FST File Number P0071-1999;**

Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.

- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**

At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the Monsanto case.

- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
Matter was adjourned *sine die* pending the outcome of the Monsanto case.

- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**

At the request of the parties, this matter was adjourned *sine die* pending the outcome of the Monsanto case.



- **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;**

On May 30, 2003, the parties asked that the matter continue to be adjourned *sine die* pending resolution of the issues in the proceeding.

- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**

The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.

- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**

On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**

The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.

- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**

At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**
On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.

- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003;**

On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.



Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0231-2003	To Refuse to Consent dated November 24, 2003	Withdrawn January 14, 2004
U0234-2004	To Refuse to Consent dated November 26, 2003	Reasons for Decision dated March 1, 2004

Decisions to be Published

Barbara Lewis (Donohue Forest Products Inc.)

Kerry (Canada) Inc.

U0234-2004



Financial Services Tribunal Decisions with Reasons

INDEX NO.:

FST File Number P0207-2002

PLAN:

Retirement Plan for Unionized Employees of
Donohue Forest Products Inc. — Pulp and Paper Divisions —
Thorold Sector, Registration Number 0294496

DATE OF DECISION:

January 9, 2004

PUBLISHED:

Bulletin 13/2 and FSCO Web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pensions Benefits Act, R.S.O. 1990, c. P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a request for an order under section 87 of the Act submitted on behalf of Barbara Lewis, spouse and beneficiary of Harold Lewis, deceased, in connection with the calculation of pre-retirement death benefit in the Retirement Plan for Unionized Employees of Donohue Forest Products Inc. — Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

BARBARA LEWIS

Applicant

— and —

SUPERINTENDENT OF FINANCIAL SERVICES

— and —

ABITIBI-CONSOLIDATED COMPANY OF CANADA (formerly Donohue Forest Products Inc.)

Respondents

BEFORE:

Martha Milczynski,*

Chair of the Tribunal and of the Panel

David A. Short,

Member of the Tribunal and of the Panel

Shiraz Y. M. Bharmal,

Member of the Tribunal and of the Panel

[*Note: Following the conclusion of the hearing by the panel but prior to the rendering of its decision, Martha Milczynski was appointed a Prothonotary in the Federal Court of Canada. As a result of this appointment, Ms. Milczynski was precluded from participating in the panel's decision.]

APPEARANCES:

For Barbara Lewis:

Gordon H. Lewis

For the Superintendent:

Deborah McPhail

For Abitibi-Consolidated Company of Canada:

Bruce Pollock

Gary Nachshen

HEARING DATES:

July 2, 2003

September 22, 2003

September 25, 2003

REASONS FOR DECISION

Background

1. Abitibi-Consolidated Company of Canada and its predecessor corporations ("Employer") are the sponsor and the administrator of the Plan registered under the Act; Aon Consulting Inc. ("Aon") are external consultants engaged by the Employer to provide administrative and Actuarial services for the Plan.
2. The Plan succeeded pension plans previously established by a predecessor corporation dating back to July 1, 1944.

In January 1982, the Plan was restated with effect from January 1, 1981 ("January 1982 Restatement").

In March 1988, the Plan text was consolidated effective September 1, 1987 and was restated to include various amendments between January 1982 and the date of consolidation, and to incorporate changes agreed in the collective agreement effective May 1, 1987 ("March 1988 Restatement").

On March 24, 1993, the Plan was revised and restated to January 1, 1992, incorporating revisions effective January 1, 1988 to reflect changes to the Act and other matters ("March 1993 Restatement"). The March 1993 Restatement made substantial changes to the calculation of benefits for retirement after 1990, and included minimum provisions to ensure that benefits already earned before then were not reduced. The March 1993 Restatement also reflected the revised requirements of the Act as of January 1, 1988, which affected minimum requirements for registered plans for periods on and after January 1, 1987 (the "reform" date). Among other things, the March 1993 Restatement provided for a minimum bene-

fit upon the death of a vested member, prior to retirement, for the benefit related to post-reform service and to post-reform amendments respecting pre-reform service ("pre-retirement death benefit").

In June 1997, the Plan was again revised and restated as of March 1, 1996 to reflect the change in the sponsoring employer and to effect changes requested by the federal tax regulatory agency, Revenue Canada, as it then was.

Further changes were made to the early and postponed retirement provisions of the Plan in December 1997.

3. Mr. Harold Lewis ("Mr. Lewis"), the deceased husband of the Applicant, was a member of the Plan until his death on November 23, 1997. Mr. Lewis joined the Plan on April 1, 1965. He was on disability leave of absence at the time of his death. The total service credited to Mr. Lewis for the purposes of determining his pension under the Plan was 30.09 years. The credited service included a period of 46 weeks of disability absence preceding his eligibility for the employer's long term disability plan ("LTD"). Mr. Lewis commenced LTD benefits on January 26, 1990. Of the total credited service, 10.89 years related to the period after 1986.
4. On December 10, 1997, the Applicant was advised by the Employer (the sponsor at that time was Donohue, a predecessor company) that, according to the provisions of the Plan, she was entitled to a death benefit upon Mr. Lewis' death. The death benefit, at her option, could be taken as either a lump sum or an equivalent monthly pension. The lump sum benefit was equal to a refund of contributions made by Mr. Lewis, with interest, for the period prior to 1987 plus the



value of the benefits earned on and after the reform date. The total amount of the lump sum was \$129,542.30. The determination of this death benefit excluded any credit for the 46 weeks of Mr. Lewis' disability absence preceding LTD.

5. On December 17, 1997, the Applicant opted for the cash lump sum, which was to be transferred to her RRSP with the Royal Bank. An amount of \$130,303.58 (\$129,542.30, plus interest from the date of death to the date of disbursement) was transferred to her RRSP at the end of December 1997 or soon thereafter.
6. In response to enquiries from Mr. Gordon Lewis on behalf of the Applicant, the Employer asked Aon to prepare a detailed explanation for Mr. Gordon Lewis about the calculation of the death benefit. Aon prepared an explanation on May 22, 1998, which is briefly summarized below:
 - a. The pre-retirement death benefit according to Plan provisions comprised of a return of pre-reform member contributions with interest (\$44,237.52) plus the commuted value of the benefit attributable to post-reform service (\$85,900.57), for a total of \$130,138.09 — higher than the previous amount of \$129,542.30. This change was attributed to an erroneous exclusion of a "bridge" benefit in the previous calculation.
 - b. The commuted value that would satisfy the minimum pre-retirement death benefit provisions of the Act was determined to be \$121,790.05. The following methodology was used to compute the minimum: determine the benefit for all service using the plan provisions applicable at the date of death, deduct from it

the benefit for pre-reform service using the plan provisions as they existed on December 31, 1986, and add the pre-1987 member contributions with interest to the result. Since the amount so determined, was less than the computation according to plan provisions, no (upward) adjustment was necessary.

7. Following concerns raised by the (then) Pension Commission of Ontario, the Employer agreed to include the 46 weeks of the pre-LTD disability absence in the determination of Mr. Lewis' benefits. As a result, the death benefit was again revised upwards, this time to \$137,730.56, by a letter from Aon dated June 2, 1998.
8. On February 12, 1999, Aon further revised the death benefit upwards by another \$2,169.06 to rectify an "incorrect" calculation. Ms. Andréé Bonneville, an actuary with Aon testified that this addition reflects a difference that arose from "post-reform improvement to [the benefit for] pre-reform service." This adjustment was confirmed through a "Statement at Death of Member" dated February 19, 2003, showing a total revised death benefit entitlement of \$139,899.62. With the various revisions in the amount of pre-retirement death benefit calculated by the Employer, there remains a difference of \$10,357.32 between the disbursement of \$129,542.30 (as of the date of Mr. Lewis' death) to the Applicant and the latest computation of \$139,899.62. Ms. Bonneville has testified that any residual payment will be increased with interest at the annual rate of 6.5% compounded annually from the date of Mr. Lewis' death to the date of disbursement.

9. The Applicant's concerns were not assuaged and she requested the Superintendent to make an Order under section 87(2)(a) requiring the Employer to comply with section 37(3)(b) and 48(1) of the Act. On November 8, 2002, the Superintendent issued a Notice of Proposal To Refuse To Make an Order. On November 22, 2002, the Applicant requested a hearing before the Financial Services Tribunal on this matter.

Relevant Provisions of the Act

Pre-retirement death benefit

48. (1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 37 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse or same-sex partner of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

Calculation of pre-retirement death benefit

48. (5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

Deferred pension (post-reform)

37. (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

- (a) that the member must be a member on or after the 1st day of January, 1988;
- (b) that the member must be a member for a continuous period of at least twenty-four months; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

- (a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date;
- (b) under any amendment made to the pension plan after the 31st day of December, 1986; and
- (c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.



Pre-reform deferred pension

36. (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

- (a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;
- (b) that the member must have reached the age of forty-five years; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before the 1st day of January, 1987 in Ontario or in a designated province,

- (a) under the terms of the pension plan, with respect to employment on or after the qualification date;
- (b) by an amendment to the pension plan made on or after the qualification date; and
- (c) by the creation of a new pension plan on or after the qualification date.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Relevant Provisions of the Plan

EXTRACTS FROM CURRENT PLAN

Provision for Death Benefit

Section 6.1 Death Before Pension Commencement

Where a Member dies before the commencement of his pension, a death benefit becomes payable, equal to (a) plus (b) as follows:

- a) Pre 1987 Service
 - (1) the Member's required contributions made to the Plan from January 1, 1981 to December 31, 1986 with Credited Interest thereon is payable in a lump sum to the Members Beneficiary; plus
 - (2) the benefits, if any, payable in accordance with the terms of the Former Plan and/or the Prior Plans
- b) Post 1986 Service
 - (1) if the member has been a Member of the Plan less than 24 months at his date of death, the Member's required contribution made to the Plan after 1986 with Credited Interest thereon is payable in a lump sum to the Member's Beneficiary or,
 - (2) if the Member has completed at least 24 months of Plan membership at his date of death, the Computed Value of the benefits accrued to the Member, excluding any entitlement to bridge benefits pursuant to Section 5.3, for Credited Service after 1986 is payable to the Member's Spouse, unless the Member and his Spouse have completed and filed a waiver in prescribed form. The Spouse may elect to receive such benefits either as a lump sum, payable in cash or as a transfer to a Registered Retirement

Savings Plan, or as an annuity payable for the Spouse's lifetime, commencing any time prior to the end of the calendar year in which the Spouse attains age 71 or, if later, within one year after the death of the Member, or prior to 1992, age 65. If the Spouse fails to make an election within 90 days of being advised of the entitlement under [this] Section, the Spouse will be deemed to have elected an immediate annuity.

If the Member had no Spouse at the date of death or the Member and his Spouse had completed and filed a waiver in prescribed form, the benefit payable under this Section 6.1 (b) is payable in a lump sum to the Members Beneficiary.

If a Member had received, at termination, part of his benefits in cash with the balance to be provided as a deferred benefit, the Member's Spouse or Beneficiary, as applicable, will receive a settlement in respect of death benefits under Section 6.1 based on the commuted value of the yet undistributed portion of the termination benefits.

Section 6.2 Excess Contributions

Death benefits payable under this Article 6 upon the Members death prior to retirement will include, if applicable, a refund of any Excess Contributions determined in accordance with Section 5.6 (b)

Retirement benefit provisions relevant to computing the death benefit

Section 5.1 Normal Retirement Benefits

b) For Retirement After May 1, 1993

Subject to the provisions of Section 5.5 (Maximum Pension) and Section 5.1(c) (Minimum Benefit), a Member who retires

after May 1, 1993 and on or after his normal retirement date will receive an annual pension in an amount equal to (1) minus (2), as follows:

- (1) 1.65% of the average of the Member's Earnings in each of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service before retirement multiplied by the number of his years of Credited Service.

LESS

- (2) 1/35th of the maximum annual pension payable to a person retiring at age 65 under the Canada/Québec Pension Plan (or other similar statutory plan), the amount of such maximum annual pension to be determined at his retirement date (or his date of Total Disability if the Member retires immediately after being in receipt of income continuance benefits under an insured program contributed to by the Participating Company), multiplied by his years of Credited Service for Canada/Québec Pension Plan Offset to a maximum of 14 years.

- c) Minimum Benefit for Retirement after 1990

Subject to the provisions of Section 5.5 (Maximum Pension), the pension under Section 5.1(b) shall not be less than (1) plus (2) plus (3) minus (4) as follows:

- (1) The benefit to which a Member is entitled under the Former Plan and/or the Prior Plans in respect to Credited Service prior to January 1, 1966,

PLUS

- (1) 2% of the average of the Member's Earnings in each of his 5 consecutive



years of highest Earnings during his last 15 years of Continuous Service immediately preceding January 1, 1991 multiplied by the number of his years of Credited Service on and after January 1, 1966 but before January 1, 1991.

PLUS

- (3) 1.65% of the average of the Member's Earnings in each of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service before retirement multiplied by the number of his years of Credited Service on and after January 1, 1991.

MINUS

- (4) The lesser of

- (A) 7/10ths of 1% of the average of such Member's Earnings in each year of his 5 consecutive years of highest Earnings during his last 15 years of Continuous Service with a Participating Company; or
- (B) 7/10ths of 1% of the average of the YMPE during the last 5 years of his Continuous Service with a Participating Company, or, for a Member in receipt of benefits under the Participating Company's long term disability plan, 7/10ths of 1% of the average of the YMPE during the 5 years immediately preceding, his date of Total Disability,

multiplied, in either case, by the number of years of his Credited Service for Canada/Québec Pension Plan Offset.

EXTRACT OF COMPARABLE RETIREMENT PROVISIONS IN JANUARY 1982 RESTATEMENT

Section 6.01 Normal Retirement Benefits

A Member who retires at normal retirement date on or after January 1, 1981 will receive an annual retirement income equal to the total of the following:

a) Regular Retirement Income

An annual retirement income equal to 40% of the total of the required contributions deposited or deemed, by reason of periods of absence in excess of 52 weeks' duration, to have been deposited to his credit in the Trust Fund for service on or after January 1, 1981.

b) Minimum Retirement Income Supplement

In addition, the Member will receive such amount of supplementary benefit, if any, as may be required, when added to the retirement income benefits provided under paragraph (a) above and the regular retirement income under section 7.1 of the Former Plan with respect to service on and after January 1, 1966, to provide a total annual retirement income equal to two per cent (2%) of the average of the Member's Earnings in each of his five (5) consecutive years of highest Earnings during his last fifteen (15) years of employment prior to retirement multiplied by the number of his years of Credited Service, reduced by the lesser of —

- (A) 7/10ths of 1% of the average of such Member's Earnings in each year of his five (5) consecutive years of highest Earnings during his last fifteen (15) years of employment with a Participating Company;

or

(B) 7/10ths of 1% of the average of the annual year's maximum pensionable earnings as defined by section 17 of the Canada Pension Plan during the last five years of his employment with a Participating company

multiplied, in either case, by the number of years of his Credited Service for Canada Pension Offset.

Such supplementary benefit shall be inclusive of the minimum retirement income supplement provided under the Former Plan for service between January 1, 1966 and December 31, 1980.

c) Former Plan and Prior Plan Benefits

In addition, each Member who was a member of the Former Plan and/or Prior Plans will receive the benefits to which he is entitled thereunder except for the minimum retirement income supplement based on Credited Service between January 1, 1966 and December 31, 1980 included in paragraph (b) above.

Positions of the Parties

The parties are in agreement as to the various dates and other information that were used for the calculation of the pre-retirement death benefit by the Employer. They also agree that the final amount of the death benefit — \$139,899.62 after taking account of the several corrections — appropriately reflects Plan provisions. Ms. Bonneville fully described the computation of this final amount in her testimony and confirmed that it is now correct and, in her opinion, reflects a "generous" interpretation of Plan provisions in some respects.

The Applicant takes the position, however, that the administrator's calculation of the minimum statutory pre-retirement benefit does not comply with subsection 48(1) of the Act.

Subsection 48(1) provides for an entitlement of a death benefit for the spouse of a member who dies prior to retirement and was entitled to a deferred pension described in section 37 of the Act. Subsection 48(5) provides that the deferred pension is to be calculated as if the member had terminated employment on the date of death. Section 37 of the Act provides for an entitlement to a deferred pension for a member who has completed 24 months of continuous service equal to the benefit provided under the pension plan for service after the reform date and under any amendment made to the pension plan after the reform date.

The Applicant argues that all benefits respecting both post-reform and pre-reform employment provided under post-reform amendments vest in accordance with section 37 of the Act, if all the sections of the pension plan in force at the termination date were created after the reform date. The member is not entitled to any benefits under sections of the Plan as it existed on the reform date because they have been repealed prior to the date of termination, and therefore there are no benefits to be considered under section 36 of the Act. The minimum pre-retirement death benefit under subsection 48(1) of the Act must therefore be based on the value of the deferred pension using the then current provisions of the Plan applied to all credited service.

The Superintendent and the Employer submit that the purpose of the split of deferred pensions between sections 36 and 37 of the Act is to segregate benefits earned prior to the major reforms to the Act effective on the reform date and benefits earned on or after the reform date. They argue that the purpose of clause 37(3)(b) of the Act is to capture additional benefits that do not fall within section 36 of the Act since they did not exist in the pension plan as at the reform date. The purpose is not to duplicate



benefits already provided by the deferred pension described in section 36 of the Act. They both maintain that any increase in pre-reform benefits that was provided by a post-reform amendment to the Plan was taken into account in the final calculation.

The Superintendent and the Employer also argue that the effect of clause 37(3)(b) of the Act is not that any post-1986 amendment to a pension plan which changes the benefit formula for pre-1987 benefits incorporates all of the pre-1987 benefits into the deferred pension under section 37 of the Act. The benefit provided by the amendment is simply the change provided by the amendment, not the change as well as the original benefit.

The Employer also argues that the Applicant's interpretation of the Act would have the effect of retroactively increasing the costs of the Employer, contrary to the legislative intention. The Applicant's position is that his interpretation of section 37 of the Act is not retroactive, because it applies to actions taken by employers subsequent to the reform date with respect to service prior to that date.

The Applicant also questions the statutory basis for the methodology used by Aon for capturing the effect of post-reform amendments on pre-reform benefits.

Analysis

There is no issue as to whether the Employer's final calculation of the pre-retirement death benefits at least meets the provisions of the Plan. In her testimony, Ms. Bonneville stated that the Employer had been generous in its interpretation of the provisions of the Plan. We have difficulty in accepting all her assertions of this "generosity," especially as it relates to how the benefits for post-reform service were calculated. Nonetheless, we concur with the parties

that the final calculation complies with or exceeds the Plan provisions.

The issue concerns whether the final calculation meets the statutory requirements for pre-retirement death benefits. The statutory pre-retirement death benefit is the commuted value of the benefit described in section 37 of the Act. There appears to be no dispute that the Employer's final calculation properly reflects the requirements of clause 37(3)(a) of the Act. The issue lies with whether the requirements of clause 37(3)(b) of the Act have been properly reflected. The crux of the issue revolves around what benefits are swept in to the phrase "under any amendment made to the pension plan after December 31, 1986." Does the word "amendment" connote the incremental change in the benefit, or does it incorporate the whole of the amended benefit?

We are persuaded by the Respondents' argument that the word "amendment" should be given its grammatical and ordinary sense in the context of the scheme and the object of the Act.

In terms of the grammatical and ordinary meaning, we accept the following meaning ascribed to the word "amendment" by Webster's Ninth New Collegiate Dictionary: "an alteration proposed or effected by this process." That is, an amendment reflects the change in the provision, and not the provision as a whole.

The Applicant argues that the effect of the March 1993 Restatement was to repeal the provisions that were effective on the reform date, and therefore all the benefits at the date of termination were to be calculated under the new provisions. We do not agree since the Plan continues. The March 1993 Restatement reflects only a change in the provisions as they affected pre-reform service; not their repeal. This is further reinforced by the fact that the prior provi-

sions are repeated in clause 5.1(c) of the Plan as a minimum; presumably to ensure that there was no reduction in benefits previously earned. Thus, the prior provisions continue to exist in a changed form.

In terms of the context of the Act, we note that the interaction of sections 36 and 37 of the Act is to delineate the portion of the deferred pension that relates to the amount that was attributable to pre-reform service based on pre-reform plan provisions, and which remains subject to the prior vesting rules, from the balance.

We conclude that the effect of clause 37(3) (b) is to provide for any change or increase resulting from a post-reform amendment. Having thus concluded, we do not need to deal with the issue of retroactivity.

Does the methodology used by Aon have a basis in the statute? We believe in essence it does, in that it is designed to capture any increase that is not apparent because of the construction of the amended formula. To quote the testimony of Ms. Bonneville:

"Given the redesign of the Plan back in 1991, we cannot compute, again, pension amounts for certain periods of service. We have to compute it on the aggregate and compare it. The only way we can obtain the post '86 pension entitlements, or pension, or whatever, is to compute the aggregate and then subtract what was accrued as of December 31, '86, with provisions applicable at that date. That's the only way we can do it on that particular plan."

Like the Applicant, however, we are puzzled that the Employer chose to provide an enhancement to the death benefit by reflecting one component of the change (see paragraph 8 of the Background), which presumably was already accounted for in accordance with the above

approach. Since this is to the benefit of the Applicant, and the final calculation (at least in so far as it reflects the Plan provisions) is acceptable to the parties, we do not need to pursue this matter.

We are also not convinced that Aon's calculation of the statutory death benefit is correct in all respects. Sections 48(1) and 37(3)(a) of the Act require the post-reform death benefit to include the commuted value of the pension benefit provided "under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date." Ms. Bonneville testified (and the written summary of her calculations subsequently added to the submissions of the Employer confirms) that Mr. Lewis' pension amount under the terms of the pension plan based on post-reform service amounted to \$9,416.89. The commuted value of that pension, based on the factor of 9.85936 reported by Ms. Bonneville, was \$92,844.51 as of the date of death. This exceeds the minimum post-retirement death benefit of \$87,313.90 reported by Ms. Bonneville. It appears that the reason for this discrepancy is that Ms. Bonneville's calculations effectively recognize a negative pension benefit amount under section 37(3)(b) of the Act representing the effect of post-1986 pension plan amendments on Mr. Lewis' pension entitlement in respect of pre-reform service, and we question whether the intent of the legislation is that the effect of including the pension benefit amount under section 37(3)(b) can be to reduce the deferred pension and its commuted value. Nevertheless, we are satisfied that even if the higher commuted value had been used in the calculations, the death benefit of \$139,899.62 pursuant to the terms of the Plan would still have exceeded the resulting minimum death benefit.



Disposition

The Superintendent is hereby directed, by order, to carry out the proposal contained in the Notice of Proposal to Refuse to Make an Order requiring the Employer to comply with section 37 (3)(b) and 48 (1) of the Act.

We note that there remains payable a portion of the death benefit in the amount of \$10,357.32 as of November 23, 1997, the date of Mr. Lewis' death, plus interest at the annual rate of 6.5 per cent compounded annually from that date to the date of disbursement.

We remain seized in this matter in respect of any applications made for costs within 60 days of the date of this decision.

DATED at Toronto this 9th day of January, 2004.

David A. Short,
Member of the Tribunal and of the Panel
Shiraz Y. M. Bharmal,
Member of the Tribunal and of the Panel

INDEX NO.:

FST File Number U0234-2004

DATE OF DECISION:

March 1, 2004

PUBLISHED:

Bulletin 13/2 and FSCO Web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 26, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 26, 2003 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the

Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. An application for withdrawal of funds from a locked-in account, based on financial hardship, is also subject to the conditions and requirements prescribed in sections 83 through 89 of Regulation 909, as amended (the "Regulation"). The Superintendent's ground for denial was that the requirements of subsection 88(2) of the Regulation do not allow the Applicant to withdraw any amount of funds from her locked-in account in this situation.
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. Subsections 88(2) and 89(6) of the Regulation are relevant to this application, and read as follows:

88.-(2) Subject to section 89, unless the application relates to expenses incurred or to be incurred for the benefit of a dependant, the owner is entitled to withdraw an amount calculated using the formula,

$$A - (B - C) = D$$

in which,

"A" is the amount the owner applies to withdraw;

"B" is the market value of all assets of the owner and the spouse or same-sex partner except the following:



1. The owner's principal residence and all personal property related to its use.
2. Motor vehicles.
3. Personal effects, including clothing and jewellery.
4. Tools of the trade that are essential to the employment of the owner or the spouse or same-sex partner.
5. Assets that are necessary to the operation of a business or farm which the owner or the spouse or same-sex partner operates and has an interest in, up to a maximum of \$50,000 for each person and for each business or farm. However, if the owner and the spouse or same-sex partner operate and have an interest in the same business or farm, the total amount for that business or farm shall not exceed \$50,000; "C" is the total of the liabilities of the owner and the spouse or same-sex partner, except liabilities secured against excluded assets listed under "B"; "(B - C)" cannot be less than 0; "D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.
5. Based on the information provided by the Applicant in her application dated October 9, 2003, she has applied to withdraw the maximum amount, in this case calculated to be an amount of \$19,729.44, in accordance with subsection 89(6) of the Regulation. This amount is "A" in the formula described in subsection 88(2) of the Regulation. In that formula, "B" and "C" are determined by information provided in the application, using the assets and liabilities of the owner and her spouse, and have the following values in this situation:
 "B" equals \$129,000 (the market value of all included assets of the owner and spouse); and
 "C" equals \$0 (the corresponding liabilities of the owner and spouse).
6. In this case, the formula in subsection 88(2) of the Regulation allows for no amount to be withdrawn, based on the following calculation:

$$\begin{aligned} D &= A - (B - C) \\ &= \$19,729.44 - (\$129,000 - \$0) \\ &= \$19,729.44 - \$129,000 \\ &= -\$109,270.56 \end{aligned}$$
 As the value of "D" is less than zero, "D" is determined to be zero, and the Applicant is not entitled to withdraw any funds from her locked-in account.
7. In her submissions to the Tribunal, the Applicant has provided statements regarding her finances and health considerations, and has indicated that she and her spouse wish to allocate their existing assets of \$129,000 for home improvements and retirement needs. However, in making a determination of this matter, the Tribunal cannot direct the Superintendent to approve an application that does not meet the requirements of



the Act and Regulation. In this case, all net assets shown in the application, including those of the Applicant and her spouse, must be included when calculating "D" in subsection 88(2), with the result that the Applicant is not entitled to withdraw any amount from her locked-in account.

8. The inclusion of a spouse's assets and liabilities in the calculation is a requirement of the Regulation, and cannot be waived by the Superintendent or by the Tribunal. As a result, this application cannot be granted, as it does not meet the relevant requirements of the Regulation, and the Tribunal affirms the Superintendent's decision not to consent to the application.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated November 26, 2003, is affirmed and this application is dismissed.

DATED at Toronto this 1st day of March, 2004.

Mr. C.S. (Kit) Moore,
Member, Financial Services Tribunal



INDEX NO.:	FST File Number P0191-2002
PLAN:	Pension Plan for the Employees of Kerry (Canada) Inc.
DATE OF DECISION:	March 4, 2004
PUBLISHED:	Bulletin 13/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to order that Kerry (Canada) Inc. reimburse the pension fund of the Pension Plan for the Employees of Kerry (Canada) Inc. (the "Plan") for certain expenses paid from the Plan since January 1, 1985, together with income thereon, and to order that Kerry (Canada) Inc. amend certain expense provisions of the current Plan documents for consistency with the original Plan documents as specified in the proposed order;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act;

AMONG:

KERRY (CANADA) INC.

Applicant

and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

- and -

**ELAINE NOLAN, GEORGE PHILLIPS,
ELISABETH RUCCIA, KENNETH R.
FULLER, PAUL CARTER, R.A. VARNEY
and BILL FITZ, being members of the
DCA EMPLOYEES PENSION COMMITTEE
representing certain of the members and
former members of the Pension Plan for
the employees of Kerry (Canada) Inc.**

Respondents

BEFORE:

Colin H.H. McNairn,

Vice Chair of the Tribunal and Chair of the Panel

Shiraz Y.M. Bharmal,

Member of the Tribunal and of the Panel

David A. Short,

Member of the Tribunal and of the Panel

APPEARANCES:

Ronald J. Walker,

Christine P. Tabbert

For Kerry (Canada) Inc.

Deborah McPhail

For the Superintendent of Financial Services

William Fitz

For the Members of the DCA Employees Pension Committee

HEARD:

October 27 & 28, 2003 and

January 7, 8 & 26, 2004



REASONS FOR DECISION

Facts

The Applicant, Kerry (Canada) Inc. ("Kerry Canada"), is the successor to DCA Canada Inc. (formerly called DCA Food Industries Ltd. and the Canadian Doughnut Company Limited) and the sponsor of a pension plan for its employees initially established by its predecessor. We refer to the employer and plan sponsor, from time to time, as the "Company" and the pension plan for the Company's employees as the "Plan."

The Plan was established on a defined benefit basis by the terms of a plan text effective December 31, 1954 (the "1954 Plan") with funding through Company and employee contributions to a pension fund constituted as a trust under a trust agreement made as of December 31, 1954 between the Company and National Trust Company, Limited as trustee (the "1954 Trust Agreement"). We refer to National Trust and any successor trustee, from time to time, as the "Trustee" and to the pension fund in respect of the Plan as the "Fund."

A new trust agreement was entered into between the Company and the same Trustee in 1958 (the "1958 Trust Agreement"), which was not materially different from the 1954 Trust Agreement in those provisions that have a bearing on the matters at issue in this proceeding. The actions of the Company in charging certain expenses to the Fund that are challenged in this proceeding took place beginning in 1985. We will, therefore, consider those actions in light of the terms of the 1958 Trust Agreement although the same results should pertain if the 1954 Trust Agreement were taken as the benchmark.

From the establishment of the Plan up to and including December 1984, the Company paid all of the expenses relating to the Plan and the Fund. From the beginning of 1985, the

Company began charging expenses relating to the Plan and the Fund, specified below under the heading "Expenses at Issue," to the Fund although in 1995 the Company reimbursed the Fund for all of the expenses that represented the fees of the Trustee up to the end of 1994, together with foregone income on the amount of those expenses. The Company relies on amended versions of the Plan text, namely the 1975 Plan, 1987 Plan and the 2000 Plan, as authorizing the payment from the Fund of those expenses that were, in fact, borne by the Fund.

On April 22, 2002, the Superintendent of Financial Services (the "Superintendent"), acting through his delegate, the Deputy Superintendent, Pension Division, issued a Notice of Proposal under section 87 of the *Pension Benefits Act* (the "Act") containing proposals to make orders against Kerry Canada requiring it to:

- reimburse the Fund for all of the amounts paid out of the Fund after January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members of the Plan (excluding taxes, interest and penalties levied against the Fund) and for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust in respect of the pension fund for the Plan so that all amendments to the Plan and the trust that permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan (the "Second Proposal").

The effect of the Second Proposal would be to require Kerry Canada to amend the Plan and the trust so that the expenses chargeable to the Fund are expressly limited to those expenses that are for the exclusive benefit of the members of the Plan.



Kerry Canada made a Request for Hearing by this Tribunal in respect of the Notice of Proposal, as it was entitled to do pursuant to subsection 89(6) of the Act, and Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz, being members of the DCA Employees Pension Committee representing certain members and former members of the Plan (the "Employees Committee") were added as parties by order of the Tribunal.

Those provisions of the various Trust Agreements and Plan texts that bear upon the determination of the issues in this proceeding are summarized in the body of these Reasons for Decision and have been set out in full in the Appendix to these Reasons.

Expenses at Issue

There are seven categories of expenses charged to the Fund after January 1, 1985 that were initially at issue in this proceeding, namely:

- (a) The fees of the Trustee for the performance of its services in respect of the Fund, which were borne by the Fund from 1998;
- (b) The fees of an investment manager for its services in respect of the investment of the Fund assets, which were charged to the Fund from 2000;
- (c) The fees of accounting firms in respect of their audits of the Fund from 1993;
- (d) Miscellaneous expenses relating to the Plan or the Fund, including filing fees charged by pension regulatory bodies;
- (e) The fees of consulting firms for the actuarial and other services relating to the Plan or the Fund;
- (f) The fees of consulting firms for their services in respect of a supplementary retirement plan for executives of the Company; and

(g) Fees for legal services in the amount of \$5,315 paid to the firm of Fasken, Campbell Godfrey in 1995.

In the course of the proceeding, Kerry Canada agreed to reimburse the Fund for the expenses referred to in items (f) and (g), together with the income that would have been earned thereon. Therefore, expenses in those categories are no longer in issue. The expenses in all of the other categories remain at issue between Kerry Canada and the Employees Committee. The Superintendent agrees with Kerry Canada that the expenses referred to in items (a) to (d) could be charged, as they were, to the Fund but contests the charging of some of the consulting fees referred to in item (e) to the Fund. The consulting fees that remain at issue between Kerry Canada and the Superintendent relate to the addition of a defined contribution option to the Plan.

Effect of the 1958 Trust Agreement

In interpreting the provisions of a trust agreement relating to the funding of a pension plan, it is important to keep in mind that such an agreement typically serves two distinct purposes. One purpose is to establish or continue a trust in respect of all or part of the pension fund (the "trust purpose"). The other purpose is to define the relationship between the plan sponsor or administrator and the trustee by setting out their respective rights and obligations (the "contractual purpose"). The various provisions of the agreement may serve one or both of these purposes. In fact, the settlement of the terms of a trust agreement usually begins with the template of the particular trust company that is to serve as trustee, which means that the protection of the interests of the trustee is likely to be prominent among the contractual purposes served by the agreement.

Sections 5 and 19 of the 1958 Trust Agreement, which were relied on by the Employees Committee in this proceeding, evidence what, in our view, is essentially a contractual purpose in providing for the payment by the Company of the Trustee's fees and the reimbursement by the Company of the expenses incurred by the Trustee in the execution of the trust and the performance of its duties under the Agreement. These same sections provide that unless or until such fees and expenses are paid by the Company, they are to constitute a charge upon the Fund. This arrangement provides a strong indication that the sections are designed primarily to ensure that the Trustee is paid, rather than to determine the ultimate allocation of responsibility for such payment as between the Company and the Fund.

Section 1 of the 1958 Trust Agreement describes the fund that is to be held in trust under that Agreement as comprising the fund established under the 1954 Trust Agreement together with additional sums paid to the Trustee, and earnings thereon, "less any payments which ... shall have been made by the Trustee as authorized [by the Agreement]." Section 3(a) of the Agreement reinforces the latter exclusion by stating that the Trustee may make payments out of the Fund "to such persons, or their beneficiaries or personal representatives" upon the certification of the retirement committee that such payments are in accordance with the provisions of the Plan and, "upon any such payment being made, the amount thereof shall no longer constitute part of the Fund." This section, like section 20 to which we were also referred, has the contractual purpose of protecting the Trustee from liability when acting upon the direction of the retirement committee. It should not be taken to reduce the scope of the pension fund assets that are impressed with a trust. We there-

fore reject the argument, put to us by Kerry Canada that the pension fund for the Plan that is subject to a trust comprises only those assets remaining in that fund after payment of any expenses authorized by the retirement committee or those officers of the Company acting on its behalf.

Nor is there anything in the 1958 Trust Agreement that would confine the trust to those assets in the pension fund that are required to provide the promised benefits and, therefore, that would justify treating surplus assets as outside the scope of the trust. On the contrary, as noted below, section 1 of the Agreement indicates that the trust assets are all of those assets that form part of the corpus or income of the Fund.

Section 1 of the 1958 Trust Agreement evidences a trust purpose in reciting that "no part of the corpus or income of the Fund shall revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated under the Plan." This reflects a basic trust principle that trust assets are to be employed in the interests of the beneficiaries of the trust. Consistent with this principle, the Agreement also provides, in section 8, that in the event of the termination of the trust, no part of the Fund shall be used other than for the exclusive benefit of members, beneficiaries or personal representatives, as set forth in the Plan. We conclude that the beneficiaries of the trust to which the Fund is subject are those who, by the terms of the Plan, are members or who are their beneficiaries or personal representatives.

Section 11 of the 1958 Trust Agreement deals with the amendment or termination of that Agreement, providing that such action may be effected by an instrument in writing executed

by the Company and the Trustee. In other words, the normal contractual effect is to be given to the Agreement in the sense that it is subject to alteration by subsequent agreement of the parties, without the need to involve those who may have some beneficial or third party interest under the Agreement. However, the section goes on to recognize and preserve the trust nature of the Fund by stating that, unless approved by the Minister of National Revenue;

no ... amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19...

An amendment that authorizes the use of the trust assets of the Fund to pay expenses will be consistent with this limitation if those expenses:

- constitute taxes of any kind, including interest and penalties, levied or assessed against the Fund or the income thereof (as per section 5);
- represent compensation payable to the Trustee that is subject to a charge against the Fund unless or until paid by the Company (as per sections 5 and 19);
- are incurred by the Trustee in the performance of its duties that are subject to a charge against the Fund until paid by the Company (as per section 5); or
- are incurred for the exclusive benefit of the employees, their beneficiaries or personal representatives under the Plan.

The inclusion of the first three classes of expenses within the limitation seems redundant because the 1958 Trust Agreement specifically authorizes the charging of those expenses to the Fund. However, if that Agreement were to be amended to transfer the sole responsibility for any of these three classes of expenses to the Company, section 11 would permit a second amendment for the purpose of making those expenses chargeable to the Fund once again, as under the 1958 Trust Agreement before it was first amended.

We note that section 11 does not prohibit an amendment to those provisions of section 5 and 19 of the Agreement that provide for the payment of the fees and expenses of the Trustee by the Company. But such an amendment could only be effective (in the absence of the approval of the Minister of National Revenue) to transfer ultimate responsibility for such payment to the Fund where the fees and expenses are incurred for the exclusive benefit of the employees, their beneficiaries or personal representatives.

The Company did not, in fact, initiate an amendment to the 1958 Trust Agreement before starting to debit the Fund, commencing in 1985, with expenses of the kind that had previously been paid directly by the Company.

While the 1958 Trust Agreement was later replaced by a new trust agreement with a different Trustee (the "2000 Trust Agreement"), the latter Agreement does not purport to modify the basic trust principle, evidenced by the 1958 Trust Agreement, that no part of the Fund shall be used or diverted other than for the exclusive benefit of those persons who, by the terms of the Plan, are members or are the beneficiaries or personal representatives of such members.

Effect of the Employee Booklets Describing the Plan

In arguing that the Company was obliged to assume the expenses of the Plan (except for taxes, interest and penalties levied against the Fund), the Employees Committee placed some reliance on the text of two employee booklets issued by the Company to employees to explain the terms of the Plan, namely the 1975 Employee Booklet and the 1988 Employee Booklet. The 1988 Employee Booklet states that "the Company will contribute all additional amounts [beyond the member contributions] that are required to fund the Plan as well as all expenses associated with the Plan." There is a similar statement in the 1975 Employee Booklet.

The 1988 Employee Booklet contains the *caveat* that it "describes the main provisions of the Plan" and "if there should be any conflict between [the] booklet and the official text [of the Plan], the text will govern in all cases." Therefore, at most, the 1988 Employee Booklet should be taken to describe a practice as to the payment of the expenses of the Plan and not an *undertaking* by the Company to pay those expenses. If the booklet were to constitute such an undertaking, it would be inconsistent with and, therefore, subordinate to the expense provisions of the 1987 Plan, which are described below. The 1987 Plan is the form of the Plan that is summarized in the 1988 Employee Booklet. The 1975 Employee Booklet states that it is a summary of the Plan, not a legally binding document. In that case, its statement that the Company pays the cost of administering the Plan cannot create a legal obligation on the part of the Company to continue to do so.

Effect of the Amendments of the Plan

The 1954 Plan, which was in effect when the 1958 Trust Agreement was entered into, contained no provision dealing with payment of expenses relating to the Plan or the Fund. However, the Company amended the Plan in 1975 to provide that the Fund should be chargeable with the fees of the trust company, investment counsel or other fund manager appointed to manage the invested assets of the Fund, the expenses of any such fund manager in respect of the Plan, payment of which was not provided by the Company, and other expenses in respect of the Plan reasonably and properly incurred by such fund manager or the Company that the Company directs be paid from the Fund (section 5 of Article XVII of the 1975 Plan). In 1987, this was replaced by a provision to the effect that all normal and reasonable expenses incurred in the operation of the Plan, including those for actuarial, consulting, administrative, investment management and auditing services, as well as government filing fees, were to be withdrawn from the Fund (Article 15.04 of the 1987 Plan). In 2000, the expense provision was amended once again, to provide that all costs and expenses incurred by the Company as administrator of the Plan on behalf of the Plan or the Fund or by its agents or advisors in respect of the Plan or the Fund may be paid from the Fund, including actuarial, consulting, legal and accounting fees and disbursements, expenses relating to the addition of the defined contribution option and expenses incurred in winding up the Plan (Article 15.04). These Plan amendments are not inconsistent with the relevant provisions of the Plan that authorized amendments from time to time. Those provisions generally permitted amendments that would not adversely affect the vested rights or accrued benefits of members under



the Plan (Article 22 of the 1954 Plan, Article XX of the 1975 Plan and Article 16.02 of the 1987 Plan). As the funding of the Plan was in a substantial surplus position at all relevant times, the amendments were unlikely to run afoul of this limitation even though they would cause the diversion of some of the assets from the Fund. Those diverted assets could fairly be taken to be surplus assets not required to satisfy the vested rights and accrued benefits of members. The Employees Committee argued that the expense provisions added to the Plan in 1975, 1987 and 2000 are inconsistent with sections 5 and 19 of the 1958 Trust Agreement. As noted above, those sections provide for the payment by the Company of the fees and expenses of the Trustee in connection with the performance of its duties and for a charge against the Fund for the amount thereof unless or until paid by the Company. In our view, there is no inconsistency. We have already indicated that the provisions of the 1958 Trust Agreement dealing with the payment of the fees and expenses of the Trustee are primarily for the purpose of fixing the responsibility of the Company vis-à-vis the Trustee. Therefore, they should not be taken to determine that all fees and expenses for which the Company is accountable to the Trustee must ultimately be borne by the Company as opposed to the Fund. The 1975, 1987 and 2000 amendments to the Plan deal with the matter of ultimate responsibility and, therefore, can be reconciled with sections 5 and 19 of the 1958 Trust Agreement when the Agreement and the Plan are read together as they should be, particularly since the Agreement recites that it forms part of the Plan.

However, the expense provisions of the 1975, 1987 and 2000 versions of the Plan must be measured against the terms of the trust to which the Fund is subject by virtue of the 1958

Trust Agreement. They cannot be taken to authorize the use or diversion of any part of the Fund other than for the exclusive benefit of such persons as from time to time may be designated under the Plan (see particularly section 1 of the Agreement). Accordingly, those provisions should be "read down" so that they only apply to authorize the charging of expenses to the Fund when those expenses are for the exclusive benefit of such persons. As none of the parties to this proceeding maintained that such persons would include any persons other than members of the Plan, their beneficiaries or personal representatives, we use the shorthand expression "members of the Plan" hereafter to refer to those persons.

Although we have discussed, at some length, the expense provisions of the Plan, this should not be taken as indicating that we are of the opinion that plan documents must contain specific provisions authorizing the charging to a pension fund of expenses relating to the plan or the fund before such an allocation can be made. In fact, it will probably be implicit in the nature of the usual funding arrangements for a pension plan that the pension fund should bear the expenses that are reasonably incurred in connection with the operation of the plan and the fund. In the present case, a more stringent criterion for charging expenses to the Fund is applicable in that the expenses must be for the exclusive benefit of the members of the Plan before they can be charged to the Fund. This is so because of the specific terms of the trust to which the Fund is subject.

Expenses for the Exclusive Benefit of the Members of the Plan

How then do we determine whether the kinds of expenses that were charged to the Fund after 1985 were for the exclusive benefit of the mem-



bers of the Plan? We heard expert evidence that the expression "for the exclusive benefit of the members of a pension plan" has no special meaning in the actuarial community.

We believe that expenses in relation to the Plan that are for the exclusive benefit of the members of the Plan, in the sense of the 1958 Trust Agreement, must logically mean expenses that are for the primary benefit of the members since no such expense can fairly be said to be for the exclusive benefit of the members on a strict literal view of that expression. For example, the Company undoubtedly realizes a benefit from the incurring of such expenses since the Plan, in relation to which the expenses are incurred, presumably enhances the morale, security and retention of employees on whom the Company's productivity and profitability depend. A strict interpretation of "exclusive benefit" could even preclude the payment of a pension benefit to a member because, arguably, such payment would also benefit the Company by discharging its obligation.

Of the expenses that remain in dispute between Kerry Canada and either of the responding parties, in our view the only ones that cannot be characterized as being for the primary benefit of the members are certain fees of consulting firms that relate to the addition of a defined contribution option to the Plan. Those fees, which total \$6,455, are for advice provided in 1999 in connection with consideration of the possibility of introducing a defined contribution option to the Plan, including the costing of such an option.

We believe that once the decision is made to introduce that option, the fees relating to the implementation of the option are for the primary benefit of the members. Such fees would relate to such matters as the development of the appropriate Plan amendments, communications

to Plan members with respect to the option and the processing of the conversion for those taking advantage of the option.

Trust and Plan Amendment Remedy

By the terms of the Second Proposal in the Notice of Proposal, the Superintendent proposes to order Kerry Canada to amend the Plan, and the terms of the trust to which the Fund is subject, in effect to limit, in express terms, the expenses that are payable from the Fund to those that are for the exclusive benefit of the members, which we have interpreted as meaning for the primary benefit of the members. We have already noted that the trust principle evidenced by the 1958 Trust Agreement — that no part of the Fund should be used or diverted in a way that is not for such benefit — was left unchanged, although not repeated, in the 2000 Trust Agreement, the only subsequent Trust Agreement. Therefore, there can be no need to reinstate that principle in explicit terms, by amendment to the trust, because the principle has not been abrogated by any subsequent trust agreement.

While it might be desirable for the provisions of the Plan to reflect, more accurately, the limitation of the terms of the trust as they apply to the charging of expenses to the Fund, we have concluded that the Superintendent has no authority to direct Kerry Canada to amend the Plan to that end.

The Superintendent argued that the Act carries the implied authority to order such an amendment, relying particularly on section 18 of the Act. There is certainly nothing in the Act that gives the Superintendent express authority to order that an amendment be made to a pension plan. Where the Act does refer to plan amendments, it contemplates their initiation by the administrator of the plan (see sections 12 & 13).



The 1975, 1987 and 2000 Plan amendments were initiated in that fashion and the 1975 and 1987 amendments were duly registered by the Superintendent, although they contained provisions about the payment of expenses from the Fund that we consider to be overly broad, on their face, because they do not confine the expenses that are chargeable to the Fund to those that are for the primary benefit of the members of the Plan. The Act does specify certain categories of plan amendments that are void (see section 14), but the expense provisions introduced by the 1975, 1987 and 2000 Plan amendments do not fall within any of those categories. We are unable to conclude that the Superintendent has the authority, in the present context, to direct that the Plan be amended to modify the effect of all or any of those amendments by limiting the expenses chargeable to the Fund to those that are for the exclusive benefit, in the sense of the primary benefit, of the members.

As the Superintendent does not have this authority, the Tribunal likewise does not have the authority on a Request for Hearing under section 89 of the Act, which is what gave rise to this proceeding. Under that section, the Tribunal may only direct the Superintendent to carry out or refrain from carrying out a proposal "and to take such action as the Tribunal considers the Superintendent ought to take in accordance with [the] Act and the regulations" (subsection (9)). Therefore, at the end of a proceeding this Tribunal can only order the Superintendent, and not others, to do something, except that the payment of costs (see section 24 of the *Financial Services Commission of Ontario Act, 1997*), and perhaps some other incidental forms of relief, may be ordered against others. Before ordering the Superintendent to do something, the Tribunal must be satisfied

that the Superintendent has the authority, by the terms of the Act or the regulations under the Act, to do what the Tribunal would order him to do.

In proceedings under section 89 of the Act, this Tribunal has, on occasion, ordered the Superintendent to carry out a proposal with some modification to what was originally proposed or to carry out some part of the proposal but to refrain from carrying out another part of the proposal. This is a proper exercise of the Tribunal's authority under subsection 89(9) of the Act and is appropriate in the present case.

Disposition

We order the Superintendent to carry out the First Proposal contained in the Notice of Proposal, i.e. the proposal to order Kerry Canada to reimburse the Fund for all amounts paid out of the Fund after January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members of the Plan, together with all income that would have been earned by the Fund if those expenses had not been paid from the Fund. However, we also order the Superintendent to modify its proposed order by specifying the amounts to be reimbursed, with foregone income, as comprising:

- the consulting and legal fees that the Kerry Canada has agreed, in the course of this proceeding, to repay to the Fund (as described in (f) and (g) under the heading "Expenses at Issue"); and
- the consulting fees, aggregating \$6,455, for advice provided in connection with the possibility of introducing a defined contribution option to the Plan, including the costing of such an option (described under the heading "Expenses for the Exclusive Benefit of the Members of the Plan").



Finally, we order the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal, i.e. the proposal to order Kerry Canada to amend the Plan and the terms of the trust to which the Fund is subject so as to limit the expenses that are payable from the Fund to those that are for the exclusive benefit of the members of the Plan.

If any party wishes to make application for an order of costs in this matter, it may do so by written request filed with the Tribunal and served on the other parties within 30 days of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

DATED at Toronto, Ontario, this 4th day of March, 2004.

Colin H.H. McNairn,
Vice-Chair of Tribunal and Chair of the Panel
Shiraz Y.M. Bharmal,
Member of the Tribunal and of the Panel
David A. Short,
Member of the Tribunal and of the Panel



APPENDIX

Selected Trust Agreement and Pension Plan Provisions

1958 Trust Agreement

Section 1

The 1954 Agreement is hereby terminated with effect from the date hereof, provided that no act, thing, document or deed heretofore done, made or executed under the 1954 Agreement shall be prejudiced or invalidated by such termination, but shall continue in full force and effect until duly dealt with under the terms of this Agreement. The Fund as established under the 1954 Agreement, together with such sums of money and such property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee and the earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee as authorized herein, shall constitute the Fund hereby created and established. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. No part of the corpus or income of the Fund shall ever revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of such persons as from time to time may be designated in the Plan.

Section 5

The expenses incurred by the Trustee in the performance of its duties, including fees for expert assistants employed by the Trustee with the consent of the Company and fees of legal counsel, and such compensation to the Trustee as may be agreed upon in writing from time to time between the Company and the Trustee, and all other proper charges and disbursements of the Trustee shall be paid by the Company, and until paid shall constitute a charge upon the

Fund. All taxes of any and all kinds whatsoever, including interest and penalties, that may be levied or assessed under any existing or future laws upon or in respect of the Fund or the income thereof shall be paid from the Fund.

Section 11

This Agreement may be amended in whole or in part or be terminated any time and from time to time by an instrument in writing executed by the Company and the then Trustee: provided however that unless approved by the Minister of National Revenue no such amendment shall authorize or permit any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of such employees, or their beneficiaries or personal representatives as from time to time may be included under the Plan, and for the payment of taxes, assessments or other charges as provided in Section 5 and Section 19 herein, provided, it being understood that this proviso is not to be construed to enlarge the obligations of the Company beyond those assumed by it under the Plan.

Section 19

The Trustee shall be entitled to compensation in accordance with the Schedule of Fees on pension and profit-sharing trusts of National Trust Company, Limited now in effect, which compensation may be adjusted from time to time based upon experience hereunder, as and when agreeable to the Company and the Trustee. Compensation payable to any successor trustee shall be agreed to by the Company and such successor trustee at the time of its designation. Such compensation shall constitute a charge upon the Fund unless it shall be paid by the

Company. The Company expressly agrees to pay all expenses incurred by it or by any Trustee in the execution of this Trust and to pay all compensation which may become due to any Trustee under the provisions of this Agreement.

Section 20

Notwithstanding anything herein or in the Plan contained, it is understood and agreed that the Trustee does not nor shall be deemed to assume any responsibility for the terms and provisions of or be involved in any way whatsoever in the administration of the Plan nor shall the Trustee be under any duty or obligation to determine whether any payment or delivery made by it from the Fund pursuant to the instructions, direction or order of the Committee from time to time constitute any use or diversion of the Fund for purposes other than the payment or provision for the retirement benefits and the cash payments provided for in the Plan, if such payment or delivery is certified by the Committee to be in accordance with the provisions of the Plan.

1954 Plan

Article 22

The Company has made every effort to develop this Plan as a safeguard to its employees and as an undertaking which will meet future conditions insofar as they can be anticipated at the present time. The Company hopes to continue the Plan indefinitely but must and does reserve the right to change, modify, suspend or discontinue the Plan, should future conditions, in the judgment of the Company, warrant such action.

If any social security or pension benefits should be created in favour of the Members of the Plan, by means of legislation under which the Company would be required to make contributions to or for the benefit of such Members, either directly or indirectly, through taxation or otherwise, the Company may with respect to such Members either discontinue the Plan or make such modifications as the Company considers equitable, without limiting the general rights reserved to the Company above. However, all contributions made by the Company are irrevocable, and, together with all contributions made by Members, may only be used exclusively for the benefit of Members, retired Members, their beneficiaries or estates, and their contingent annuitants. No change or modification will effect any rights which such persons may then have with respect to the terms of payment of, or the amount of, retirement income, which the contributions made by the Member and/or the Company, prior to the effective date of such change or modification, will provide.

If it ever should be necessary to discontinue the Plan, contributions made by the Company cannot be withdrawn, but must remain in the Trust Fund. In such event the Trust Fund shall be distributed among the Members and retired Members and their beneficiaries and estates and contingent annuitants in an equitable manner determined by the Retirement Committee in consultation with the Actuary and the Company, or, if the Company shall have been wound up or have become bankrupt, by the liquidator or Trustee in Bankruptcy of the Company as the case may be. No liability shall attach to the Retirement



Committee or any person thereon, or the Company, or the Liquidator, or the Trustee in Bankruptcy in connection with the distribution, if made in all sincerity and good faith.

1975 Plan

Article XVII, Section 5

The Fund shall be chargeable with the fees of the Fund Manager and any expenses incurred by the Fund Manager in respect of the Plan for which payment is not provided by the Company, and any expenses in respect of the Plan reasonably and properly incurred by the Fund Manager or the Company which the Company may direct to be paid from the Fund.

Article XX

1. Notwithstanding anything herein contained, but subject to Section 3 of this Article, the Plan may be amended at any time and from time to time by the Company, and all such amendments shall be binding on the Company and on every Member.
2. Notice of every such amendment shall forthwith be given to the Fund Manager. If the amendment directly or indirectly affects the benefits due to the Members, notice thereof shall be given to the Members.
3. No such amendment shall adversely affect the right of a Pensioner to continue to receive his pension under the Plan, or adversely affect any vested right as the same exists under the Plan at the date of such amendment, or reduce the benefits which the Member has accrued by reason of service to the date of the

amendment, except as provided under Article XV (RIGHTS ON DISCONTINUANCE OF PLAN).

1987 Plan

Article 15.04

All normal and reasonable expenses incurred in the operation of the Plan shall be withdrawn from the Pension Fund, unless otherwise paid by the Company. Such expenses may include, but shall not be limited to, those relating to actuarial, consulting, administrative, investment management and auditing services, as well as government filing fees.

Article 16.02

No amendment to the Plan shall operate to reduce the benefits which have accrued to Members hereof prior to the date of such amendment, nor shall the Company have the power to make any amendment which would cause or permit any portion of the contributions made prior to that date to be diverted, prior to making provisions for the satisfaction of all liabilities of the Plan, for purposes other than the benefit of the Members, their respective estates, Beneficiaries or joint annuitants in accordance with the provisions of the Plan, the requirements of Revenue Canada and the provisions of the Pensions Benefits Act. In the event of termination of the Plan, the Company shall not be obligated to make any further contributions to the Plan with respect to service after the date of such termination of the Plan.



2000 Plan

Article 15.04

- (a) Subject to paragraph (b), all costs and expenses incurred by the Administrator on behalf of the Plan or the Pension Fund may be paid from the Pension Fund or by the Company from the Forfeiture Account or otherwise, including without limitation, the fees and disbursements of the agents of the Administrator with respect to the Plan or Pension Fund, the fees and disbursements of the advisors with respect to the Plan or Pension Fund, including actuarial, consulting, legal and accounting fees and disbursements, expenses incurred in connection with adding a defined contribution component to the Plan, and expenses incurred in winding up the Plan. The administrator or the Company or either of them may pay any such fees and expenses on behalf of the Plan or Pension Fund, subject to reimbursement by the Pension Fund in accordance with Applicable Legislation.
- (b) The following expenses shall be paid from each of the Accounts under Part 2: the investment management fees of the Funding Agency related to such Account and the costs related to the investments of the Investment Fund(s) in which such Account is invested, including brokerage, commissions and transfer taxes, and costs related to investment counsel and investment management services.
- [The investment management expenses referred to in clause (b) relate to those incurred in respect of defined contribution accounts under the Plan.]

NOTES

NOTES



NOTES





NOTES

NOTES



NOTES

NOTES

PLACE
STAMP
HERE

The Editor, *Pension Bulletin*
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
Box 85
North York, ON
M2N 6L9



Please complete and return this form if you no longer wish to receive the Pension Bulletin or if your address label is incorrect, or if you wish to receive the Pension Bulletin in French:

I do not wish to continue receiving the Pension Bulletin.

My label is incorrect. Please revise as follows:

Name _____

Title _____

Organization _____

Address _____

City _____ Province _____

Country _____ Postal Code _____

Please send _____ copies of the Pension Bulletin in French.

Thank you for your assistance with the Mailing List Review.

CA20N
TR600
- B74

TABLE OF CONTENTS

General Announcements

Pension Division - Staff Changes	1
Partial Wind Ups and Surplus Distribution	2
Multi-Employer Pension Plan (MEPP) Consultation Committee	4
Pension Advisory Committees - Membership as of September 1, 2004	5

Court/Prosecution Matters

Court Matters	7
Prosecution Matters	10

Legislative Changes/Regulatory Policies

Conversion of a Plan from Defined Benefit to Defined Contribution - C200-101	13
--	----

Superintendent of Financial Services

Administrator Appointments - Section 71 of the Pension Benefits Act	19
---	----

Notices of Proposal to Make an Order	20
Notices of Proposal to Refuse to Make an Order	46
Notices of Proposal to Make a Declaration That the Pension Benefits Guarantee Fund Applies to Pension Plans	52
Orders that Pension Plans be Wound Up	70
Consents to Payments of Surplus Out of Wound Up Pension Plans	86
Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans - Subsection 83(1) of the <i>Pension Benefits Act</i>	92
Allocations of Money from the Pension Benefits Guarantee Fund	102

Financial Services Tribunal Activities

Appointments of Financial Services Tribunal Members	107
Pension Hearings Before the Financial Services Tribunal	108
Financial Services Tribunal Decisions with Reasons	121



Ontario



All publications provided by the Financial Services Commission of Ontario (FSCO) in written or electronic formats have been prepared by FSCO to provide general information about pension matters to the public.

Information in this Bulletin or any FSCO publication is provided by FSCO upon the express understanding that neither FSCO nor any member of the staff of FSCO is providing legal, actuarial, accounting or other professional advice or services whatsoever with respect to the material contained in this Bulletin or any FSCO publication. FSCO and staff of FSCO are not responsible for any action, costs, damages or liability arising from the use of any information contained in FSCO publications nor in respect of the consequences of anything done or omitted to be done by any person in reliance upon the whole or any part of the contents of this Bulletin or any FSCO product.

The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

This material is owned by the Government of Ontario and protected by copyright law. It may not be reproduced or redistributed for commercial purposes without the prior written permission of the Queen's Printer for Ontario.

If it is reproduced or redistributed for non-commercial purposes, Crown copyright is to be acknowledged.

PERMISSION

To request permission to reproduce all or part of this material for commercial purposes, please contact the Queen's Printer's representative:

Senior Copyright Analyst

Publications Ontario

(416) 326-5153

E-mail: copyright@gov.on.ca

© Queen's Printer for Ontario, 2004

ISBN 1481-6148

Ce document est disponible en français



GENERAL ANNOUNCEMENTS

Pension Division - Staff Changes

John Kring Shan accepted the position of Pension Officer, Gino Marandola accepted the position of Senior Manager, Operations and Eva Lungu accepted the position of Administrative Pension Analyst in the Pension Plans Branch.

Joey Shiner has accepted the position of Compliance Assistant and Barbara Sisnett has accepted the position of Administrative Assistant in the Administrative and Operational Support Unit of the Pension Plans Branch.



Partial Wind Ups and Surplus Distribution

The Supreme Court of Canada released its decision in *Monsanto Canada Inc. v. Superintendent of Financial Services* on July 29, 2004 (see also p. 7). As part of an ongoing effort to update affected stakeholders, the following notice was posted on the FSCO website at: www.fSCO.gov.on.ca on August 30, 2004.

Partial Wind Ups Post-Monsanto

The current *Ontario Pension Benefits Act* (PBA), which came into force on January 1, 1988, requires the distribution of pension plan surplus on both full and partial wind up of a pension plan. This requirement was confirmed by the Supreme Court of Canada in its decision in *Monsanto Canada Inc. v. Superintendent of Financial Services*, released on July 29, 2004.

What the Decision Means

In Ontario, all pension plans that undertake a partial plan wind up must distribute any surplus that relates to the partial wind up group as part of the partial wind up process, as required by subsection 70(6) and the definition of "partial wind up" under section 1 of the PBA. The actual treatment of the surplus, including any surplus distribution, must be in accordance with the terms of the pension plan and the requirements of the PBA and Regulation 909 made under the PBA.

Current Status of Partial Wind Up Reports Already Filed

- Where the report stated there was no surplus at the effective date of the partial wind up, the filing was complete and any outstanding questions were resolved, Superintendent approval of the partial wind up report was granted. With the distribution of the assets, the partial wind up is complete.
- Where the report indicated a surplus at the effective date of the partial wind up and approval of the partial wind up report was granted, with the distribution of the assets, the partial wind up is complete.

Where the report indicated a surplus at the effective date of the partial wind up and no proposal for the distribution of the surplus was filed or approved, the Superintendent did not approve the partial wind up report, but provided approval under subsection 70(3) of the PBA to distribute the basic benefits once all benefit-related issues were resolved. Further filings to update the partial wind up report and deal with the surplus related to the partial wind up group are required at this time. Letters providing details of the filings required will be mailed



to the affected plan administrators by August 29, 2004. Any affected plan administrator who does not receive a letter should contact FSCO as provided below.

- Where a hearing before the Financial Services Tribunal in respect of a partial wind up has been on hold pending the outcome of the *Monsanto* appeal, the hearing may now proceed at the request of a party to the hearing.

Current Status of Related Pension Policies

In the period since the Supreme Court decided to hear the *Monsanto* appeal, FSCO has been reviewing all pension policies related to wind up, partial wind up and surplus. A list indicating the status of the policy review process will be available shortly. The first new policy to be issued will be S900-511, Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan.

Contact Information

If you have questions or concerns, please contact:

Grant Ardern
Technical Consultant, Pension Plans Branch
Financial Services Commission of Ontario
5160 Yonge Street, 4th Floor
Box 85
North York ON M2N 6L9

Telephone: 416-226-7788
Toll Free: 1-800-668-0128, ext. 7788
Email: gardern@fsco.gov.on.ca

NOTE: It is anticipated that this document will be updated from time to time as FSCO completes its analysis of the implications of the Supreme Court of Canada decision



Multi-Employer Pension Plan (MEPP) Consultation Committee

FSCO's Multi-Employer Pension Plan (MEPP) Consultation Committee held its first meeting on June 24, 2004. The MEPP Consultation Committee was established to provide confidential advice regarding multi-employer pension plans to the Deputy Superintendent, Pensions.

Members of the Committee are:

Randy Bauslaugh
Susan Bird
Brian Foote
Michael Gallagher
Bryan Kogut
Thomas Levy
Mark Zigler (Chair)



FSCO Pension Advisory Committees - Membership as of September 1, 2004

Legal Advisory Committee

Greig, Louise
Helbronner, Caroline
Lokan, Andrew
O'Reilly, Hugh (VC)
Padfield, Michael
Philpott, Susan
Pollock, Bruce
Rowbotham, Mark
Rowe, Kevin
Whiston, Bethune (C)
Winfield, Gregory

Accounting and Assurance Advisory Committee

Besler, Jason
Eigl, Charlie (C)
French, Mike
Preis, Katherine
Racanelli, Nick
Wade, Jack
Walker, Albert (VC)

Actuarial Advisory Committee

Benjamin, Gavin
Cohen, Lorne (C)
DiRisio, Wendy
Hart, David
Hutchinson, Laurie (VC)
Levy, Thomas
Newman, Laura
Peng, Peter
Pitcher, Clare
Robertson, Marcus
Young, Wilson

Investment Advisory Committee

Andrews, Doug
Butera, Michael
Grantier, Bruce (C)
Mercier, Eileen
Mills, Daniel
Pennal, Peter
Pond, Robin (VC)
Schaefer, Klaus

(C) denotes Chair (VC) denotes Vice-Chair



Ontario





Ontario

COURT/PROSECUTION MATTERS

The information set out below is current to August 5, 2004.

Court Matters

I. Monsanto

The Court of Appeal held that subsection 70(6) of the Pensions Benefits Act (PBA) requires a distribution of surplus assets on partial wind up. On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management (ACPM) to appeal the Court of Appeal's decision. Five parties were granted intervener status in the appeal: National Trust Company; a group of former members from the National Trust Plan and one former member of the Monsanto Plan; the federal Ministry of the Attorney General representing the Office of the Superintendent of Financial Institutions; Nicole Lacroix, representing a group that has started a class action over pension surplus against Canada Mortgage & Housing Corporation; and the Canadian Labour Congress/Ontario Federation of Labour. The appeal was heard on February 16, 2004.

On July 29, 2004, the Supreme Court unanimously dismissed the appeal. The Supreme Court held that the correctness standard of review applies to the Financial Services Tribunal when it interprets provisions of the PBA that are a pure question of law. The Supreme Court also held that subsection 70(6) of the PBA requires a distribution of surplus assets on partial wind up.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the PBA. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded \$40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals were heard in the Court of Appeal on November 10, 2003. The Court released its decision on



February 10, 2004, holding that Ms. Stairs was entitled to pre-retirement death benefits for both the pre-1987 and post-1986 periods of employment. However, the Superintendent only had jurisdiction to order the post-1986 benefits to be paid because neither the PBA nor the Plan provided for pre-1987 pre-retirement death benefits. The Court held that the valuation date was the date of death (based on the "wait and see" method employed with respect to the pension in the separation agreement) and that the 50% rule in subsection 51(2) of the PBA applied to the pre-retirement death benefits, not the entire pension benefit. The Court found that Ms. Stairs' interest was not derivative of the current spouse's interest and was therefore to be calculated based on her date of birth and was to continue until her date of death. Finally, the Court awarded costs to Ms. Stairs in the amount of \$25,000 payable on a partial indemnity basis by the Board. No application for leave to appeal to the Supreme Court of Canada has been filed, so the Court of Appeal decision is now final.

III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a

hearing before the Financial Services Tribunal (FST). A hearing was requested.

The FST held the hearing on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members have appealed the FST's decision to the Divisional Court. The appeal was set to be heard on January 29 and 30, 2004, but was adjourned to September 13 and 14, 2004.

IV. Marshall-Barwick Limited

The FST held a hearing in this matter on September 9, 2002. The issue at this hearing was whether a Notice of Proposal proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The FST released its decision on November 29, 2002, upholding the Superintendent's Notice of Proposal and directing the Administrator to file a revised wind up report that includes, in the partial



Ontario

wind up group, the member terminated for cause.

The company has appealed the FST's decision to the Divisional Court. No date has been set for hearing the appeal.

V. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003 requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.

VI. Donohue Forest Products Inc.

The spouse of a deceased Plan member requested a hearing before the FST with respect to a Notice of Proposal issued by the Superintendent on November 8, 2002, which refused to order the Plan Administrator to recalculate the pre-retirement death benefit owing. The hearing took place July 2, 2003 and September 22 and 25, 2003. The FST released its decision on January 9, 2004, finding that the Notice of Proposal should be affirmed. The applicant has appealed the FST's decision to the Divisional Court. The appeal is scheduled to be heard on November 10, 2004.

VII. Kerry (Canada) Inc.

The FST conducted a hearing that arose from a Notice of Proposal in which the Superintendent of Financial Services proposed to order Kerry (Canada) Inc. to reimburse certain expenses

paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released its decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the PBA for the Superintendent to order a plan amended.

A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision. No date has been set for the hearing of the appeal.



Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the Pension Plan. The first appearance was on June 13, 2002. The trial which was initially set for November 10, 2003 was adjourned on consent to May 11 and 18, 2004. On May 11, 2004, the employer pleaded guilty to one count of failing to pay the amount required to fund the benefits payable under the employees' Pension Plan. A fine in the sum of \$3,420 was imposed and the Court made a restitution order in the sum of \$342,000. The charges against the President were withdrawn.

II. Microcolor Dispersions Inc.

Charges were laid against the corporation and its two directors for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004. On May 10, 2004, all charges against the directors and the corporation were withdrawn.

III. John Parker

John Parker was a director of Microcolor Dispersions Inc. Charges were laid against Microcolor and its two directors, including Parker, for non-remittance of contributions. The first appearance on the charges against Parker was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The

trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004. On May 10, 2004, all charges were withdrawn.

IV. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer for the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario at which time the non-remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. On April 29, 2004, the employer pleaded guilty to one count of failing to remit contributions and a fine of \$7,500 inclusive of victim fine surcharge was levied. All other charges against the employer and all the charges against the corporate officer were withdrawn.

V. Meto Canada Inc.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 1999, 2000, 2001 and 2002 with respect to the Meto Canada Inc. Employees Pension Plan. The first appearance was on April 6, 2004 when the matter was adjourned to May 4, 2004. On May 4, 2004, the corporation pleaded guilty to all four counts of failing to file a financial statement for the relevant fiscal



Ontario

years. The corporation was fined \$4,500, plus a \$1,110 victim fine surcharge.

VI. Mutual/Hadwen Imaging Technologies Inc.

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions. The first appearance was on April 14, 2004, when trial dates were set for January 17 to 21, 2005.

VII. Cleaver-Books of Canada Ltd.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 2000, 2001 and 2002 with respect to the Pension Plan for Hourly Employees of Cleaver-Brooks of Canada. The first appearance was held on July 13, when the matter was adjourned to August 11, 2004.



Ontario





LEGISLATIVE CHANGES / REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Conversion

INDEX NO.: C200-101

TITLE: Conversion of a Plan from Defined Benefit to Defined Contribution
- PBA ss. 14(1)(c), 26(1), 41, 42, 48 and 63(7)
- Regulation 909 s. 19(1)

APPROVED BY: Superintendent of Financial Services

PUBLISHED: FSCO Website (May 2004)

EFFECTIVE DATE: June 1, 2004

REPLACES: C200-100

Note: Where this policy conflicts with the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 ("FSCO Act"), *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Defined Benefit to Defined Contribution Plan Conversion

The conversion of a defined benefit plan to a defined contribution plan alters the fundamental pension agreement between the employer and the plan members. The PBA does not expressly address such plan conversions. It is recognized that plan sponsors are entitled to change the basic structure of a pension plan for future benefits. However, plan members should receive full information with respect to the conversion and the options available to them. While each case presents its own circumstances, the following guidelines are set out to assist such conversions. Plan conversions are effected by means of a plan amendment. Generally, such an amendment will be registered only if it complies with these guidelines. The guidelines deal with the conversion of accrued benefits.



1. Application of this Policy

This policy is directed at plan conversions where the plan is changed from a defined benefit to a defined contribution plan, the members' benefits that have accrued up to the date of conversion are commuted and the commuted value is credited toward the members' accounts under the subsequent defined contribution plan.

2. Means of Effecting Conversion

The conversion is effected by a plan amendment, for which notice must be given prior to implementation in accordance with subsection 26(1) of the PBA. The effective date of the plan amendment may not be earlier than the date of the notice.

As soon as possible after the members' entitlements and commuted values under the defined benefit plan have been determined, each member being affected by the conversion must be given a Statement of Benefits and Options. This Statement must contain at a minimum the information set out in Schedule A.

3. Option of Members

All members of the plan to whom the conversion applies must be given the option of preserving their accrued benefits in the form of a defined benefit. If no election is made, the member is considered not to have elected to convert his or her accrued benefits to a defined contribution form.

If the plan sponsor elects to purchase an annuity for the members who choose to preserve their

benefits in the form of a defined benefit, the annuity must comply with all requirements of the plan and the PBA, such as early retirement provisions (section 41), transfer rights (section 42) and pre-retirement death benefits (section 48).

4. Minimum Commuted Value

The commuted value of the accrued benefits as of the date of conversion must be determined for each member. The method used to determine the minimum commuted values must comply with the requirements of subsection 19(1) of the Regulation.

The value of ancillary benefits (such as bridge benefits or early retirement benefits for which the member has met all eligibility requirements under the pension plan as of the date of conversion) must be taken into account in determining the commuted value of the member's accrued benefits in order to ensure compliance with clause 14(1)(c) of the PBA.

In the case of a contributory pre-1987 accrued benefit, the commuted value must not be less than the member's required contributions plus interest.

Please also refer to Salary Projections in section 5 of this policy below.

5. Salary Projections

Where a plan is structured such that benefits are related to final earnings or best earnings of a member, a projection of salary increases must be taken into account in calculating the commuted

value of the accrued benefits unless the plan clearly provides that salary projection need not be taken into account on a plan conversion. However, the probability of termination may also be recognized in the determination of the commuted values. FSCO staff may also approve an approximate method for the determination of the commuted value which will produce a reasonably similar result.

If the plan is amended to freeze the salary level at which the accrued benefits are determined as of the date of conversion, notice of this amendment to freeze the salary level must be included as part of the notice of amendment given to all affected plan members.

6. Application of the 50% Rule and Treatment of the Excess

In a contributory plan, the amount by which the member's contributions plus interest exceed 50% of the commuted value of the pension as of the date of conversion must be added to the member's defined contribution account for:

- all benefits which accrued from January 1, 1987 to the date of conversion, and pre-1987 accrued benefits where the 50% rule applies to such benefits.

The plan sponsor may determine that this excess amount either be: retained in the member's required contribution account, in which case the amount is treated in the same manner as the other monies in the accounts, or treated as an additional voluntary contribution.

The amendment effecting the conversion must specify how such excess amounts are to be treated. If the excess is deemed to be an additional voluntary contribution, the plan must be amended to so allow and an application must be made to the Superintendent under subsection 63(7) of the PBA for a notional refund to the member of what had, before the amendment, constituted required member contributions.

7. Amounts in Excess of the Income Tax Act Limits

In accordance with section 21.1 of the Regulation, a member who elects to convert his or her defined benefits to defined contribution benefits is entitled to require the administrator to pay to the member that portion of the amount of the commuted value of defined benefits that exceeds the maximum transfer limit prescribed under the *Income Tax Act (Canada)* for such a conversion.

8. Vesting

Conversion of the plan does not affect the date on which vesting of benefits occurs. The defined contribution account is subject to the vesting rules of the plan, and the member must be informed that the vesting rules of the plan continue to apply.

9. Refunds

Where, in connection with the conversion, the plan is to be amended to provide for a refund of a member's contributions, application for a refund of contributions to members must be



made to the Superintendent under subsection 63(7) of the PBA.

10. Funding

If the assets of the plan are not sufficient to cover the commuted value of the benefits that are to be converted and the annuities purchased pursuant to the conversion, the sponsor must contribute the shortfall to the plan in a lump sum. Furthermore, the sponsor must, if necessary, make a lump sum payment to ensure that the solvency ratio (the ratio of market value of assets to the solvency liabilities) of the plan in respect of the defined benefit portion of the plan that remains after the conversion is not less than the plan's solvency ratio before the conversion was implemented but need not exceed 1.0.

11. Conversion Report

A conversion report is required to be filed at the time the plan amendment is filed.

SCHEDULE A

STATEMENT OF BENEFITS AND OPTIONS FOR MEMBERS ON PLAN CONVERSION

The following information must be included in the Statement of Benefits and Options given to each member upon determination of the member's entitlements and commuted values from the defined benefit plan:

1. A statement that the member may elect not to convert the accrued pension and instead retain all entitlements under the existing defined benefit plan.
2. If the member elects to convert the accrued pension, the amount of the accrued pension and the commuted value that will be credited to the member's defined contribution account must include the amount and value of:
 - ancillary benefits for which the member has satisfied all eligibility requirements; and
 - any benefit improvement granted in conjunction with the conversion.
3. The amount of any excess member contributions resulting from application of the 50% rule and the treatment of such contributions.
4. A statement that the member will no longer be entitled to the benefits under the defined benefit plan, and that the member's pension benefit will depend on the earnings of the defined contribution plan and the annuity rates in effect at the time the member has terminated employment and chooses to



Ontario

annuitize the benefit, except with respect to benefits not converted.

5. Identification of ancillary benefits for which the member has not met the eligibility requirements, and that these ancillary benefits will no longer be offered in the defined contribution plan.
6. A statement that the defined contribution account is subject to the vesting rules of the plan, and specification of the amount that is vested as of the date of the conversion.



Ontario





SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments - Section 71 of the PBA

1. Cowan Wright Beauchamp as the Administrator of the Pension Plan for the Employees of Mimik Industries Ltd. (Registration No. 287490), effective immediately.
DATED at Toronto, Ontario, this 22nd day of June, 2004.
2. Standard Life as the Administrator of the Erno Manufacturing Employees Pension Plan (Registration No. 0306449), effective immediately.
DATED at Toronto, Ontario, this 18th day of June, 2004.
3. PricewaterhouseCoopers Inc. as the Administrator of the Hoskins Alloys of Canada Limited Employees' Retirement Plan (Registration No. 0557868), effective immediately.
DATED at Toronto, Ontario, this 7th day of May, 2004.
4. Morneau Sobeco as the Administrator of the Proboard Ltd. Employees Pension Plan (Registration No. 593814), effective immediately.
DATED at Toronto, Ontario, this 3rd day of May, 2004.
5. Morneau Sobeco as the Administrator of the Bargaining Unit Pension Plan for Members of United Steelworkers of America (Registration No. 988444), effective immediately.
DATED at Toronto, Ontario, this 26th day of March, 2004.
6. Morneau Sobeco as the Administrator of the Retirement Plan for Salaried Employees of Canadian Drawn Steel Company Inc. (Registration No. 988196), effective immediately.
DATED at Toronto, Ontario, this 26th day of March, 2004.
7. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Intermetco Senior Management Employees of PSC Metals Inc. (Registration No. 687608), effective immediately.
DATED at Toronto, Ontario, this 19th day of March, 2004.
8. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Members of USWA Locals 6920 of PSC Metals Inc. (Registration No. 474932), effective immediately.
DATED at Toronto, Ontario, this 19th day of March, 2004.
9. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Members of USWA Locals 6098 of PSC Metals Inc. (Registration No. 347047), effective immediately.
DATED at Toronto, Ontario, this 19th day of March, 2004.
10. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Former I.W.& S. Salaried Employees of PSC Metals Inc. (Registration No. 481937), effective immediately.
DATED at Toronto, Ontario, this 19th day of March, 2004.



Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc.**, Registration Number 0348995 (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney
Administrator of the
Pension Plan

AND TO: Fantom Technologies Inc.
PO Box 1004
Welland ON L3B 5S1

Attention: Norm Wotherspoon
Treasurer
Employer

AND TO: PricewaterhouseCoopers
Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Catherine Hristow
Vice President
Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc.

AND TO: The United Steelworkers of
America Local 6444,
District 6
234 Eglinton Avenue East
Toronto ON M4P 1K5

Attention: Robert Heally and Brian
Greenaway
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995, be wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.



Ontario

6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹- PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after mailing



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B**, Registration Number 0910810 (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney
Administrator of the
Pension Plan

AND TO: Fantom Technologies Inc.
PO Box 1004
Welland ON L3B 5S1

Attention: Norm Wotherspoon
Treasurer
Employer

AND TO: PricewaterhouseCoopers
Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Catherine Hristow
Vice President
Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Fantom Technologies Inc. Salaried Employees

Retirement Income Plan - Part A and Part B, Registration Number 0910810, be wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Ontario

ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions





IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Employees of General Publishing Co. Limited**, Registration Number 0563148 (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Al Kiel
Partner
Administrator of the Pension Plan

AND TO: **General Publishing Co. Limited**
895 Don Mills Road
400-2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey
Manager Human Resources
Employer

AND TO: Deloitte & Touche Inc.
79 Wellington Street West
Maritime Life Tower
Toronto Dominion Centre, P.O. Box 29
Toronto ON M5K 1B9

Attention: Paul Denton
Director, Financial Advisory Services
Trustee in Bankruptcy for
General Publishing Co. Limited

AND TO: Graphic Communications International Union Local 500M
324 Prince Edward Drive
Suite 10
Toronto ON M8Y 3Z5
Attention: John Bickford
Office Manager
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148, be wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer.



or as a result of the reorganization of the business of the Employer.

5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.
6. Such further reasons as may come to my attention.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING
shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146** (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Bethune Whiston
Principal
**Administrator of the
Pension Plan**

AND TO: Maksteel Inc.
7615 Torbram Road
Mississauga ON L4T 4A8

Attention: Jerry Sauer
Manager Human Resources
Employer

AND TO: Ernst & Young Inc.
222 Bay Street, 16th Floor
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Sharon Hamilton
Manager
**Interim Receiver for
Maksteel Inc.**

AND TO: United Steelworkers of America Local 5958
1031 Barton Street East
Hamilton ON L8L 3E3

Attention: Bryan Adamczyk
Staff Representative
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146, be wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.



Ontario

6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Agnew Group Inc. Retirement Plan, Registration No. 0552802** (the "Plan");

TO: PricewaterhouseCoopers Inc.
c/o McMillan Binch LLP
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3

Attention: Susan Nickerson
Applicant

NOTICE OF PROPOSAL

WHEREAS Agnew Group Inc., sponsored the Plan which provided a non-contributory defined contribution benefit for its employees;

AND WHEREAS Royal Bank of Canada appointed PricewaterhouseCoopers Inc. as Receiver and Manager of Agnew Group Inc. effective January 12, 1996;

AND WHEREAS Royal Bank of Canada is the Secured Creditor of Agnew Group Inc. as stipulated in the principal security documents granted by Agnew Group Inc. as follows:

1. a \$60,000,000 Debenture dated July 6, 1990, together with a pledge of the said debenture;

2. a General Security Agreement in the Bank's form 924 dated July 6, 1990;
3. a general assignment pursuant to section 427 of the *Bank Act* in the Bank's form 687 dated October 29, 1993; and
4. a Trust Deed of Hypothec, Mortgage and Pledge dated December 1991 and Debenture No. 1 dated December 2, 1991 in the amount of \$60,000,000, together with a pledge of Agnew Quebec Debenture dated December 2, 1991.

AND WHEREAS PricewaterhouseCoopers Inc. in its capacity Receiver and Manager of the assets of Agnew Group Inc. is entitled to receive any surplus funds payable to Agnew Group Inc. (the "Employer") under the Plan;

AND WHEREAS PricewaterhouseCoopers Inc. made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money out of the Plan that is surplus dated May 1, 2003.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Plan to PricewaterhouseCoopers Inc. in the amount of \$505,430 (representing 35% of the Wind Up Surplus in the Plan of \$1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits including members' share of the negotiated surplus and any other payments to which the members, former members, and any other persons are entitled under the Plan have been paid, purchased or otherwise provided for.



I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Plan was wound up, effective January 12, 1996.
2. As at May 1, 2003, the surplus in the Plan was estimated at \$1,446,787.
3. There is an Order of the Ontario Superior Court of Justice dated May 12, 2003, that the Plan provides for payment of surplus, within the meaning of subsection 79(3) of the Act to the Applicant.
4. The Employer became bankrupt effective January 12, 1996.
5. PricewaterhouseCoopers Inc. in its capacity as Receiver and Manager of the assets of the Employer is entitled to receive any surplus funds payable to the Employer under the Plan.
6. The application discloses that by written agreement made by PricewaterhouseCoopers Inc. and 85% of the active members and other members (as defined in the application) and 88% of the former members and other persons entitled to payments, the surplus in the Plan as at May 1, 2003, is to be distributed:
 - a) 35.0% to the Applicant; and
 - b) 65.0% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
7. PricewaterhouseCoopers Inc. has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 35.0% of the surplus as at May 1, 2003, plus investment earnings to the date of payment.

8. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 6th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Al Kiel, Morneau Sobeco

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the Restated Pension Plan for Employees of Downey Building Materials Limited, Registration No. 469718;

TO: Downey Building Materials Limited
539 Great Northern Road
Sault Ste. Marie, Ontario
P6B 5A1

Attention: A. Melville
Accountant & Director
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the The Restated Pension Plan for Employees of Downey Building Materials Limited, Registration No. 469718 (the "Plan"), to Downey Building Materials Limited in the amount of \$90,152.57 as at October 2, 2002, plus investment earnings thereon to the date of payment, less all expenses related to the plan wind up and the surplus application.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement as set out in paragraph #5 below) and any other payments to

which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Downey Building Materials Limited is the Employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective October 2, 2002.
3. As at October 2, 2002, the surplus in the Plan was estimated at \$150,254.29.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
 - a) 60% to the Employer; and
 - b) 40% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 60% of the surplus in the Plan plus investment earnings thereon to the date of payment less all expenses related to the plan wind up and the surplus application of the Plan.



Ontario

7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clauses 8(1)(b), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 8th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions

cc: T. Ian McLeod, HR-on-Demand Inc.

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Ryancon**, Registration Number 298430 (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: Ryancon
144 Sharer Road
Vaughan ON L4L 8P4

Attention: John D. Hains
Chief Financial Officer
Employer

AND TO: BDO Dunwoody Limited
33 City Centre Drive, Suite 680
Mississauga ON L5B 2N5

Attention: Mr. Darryl McConnell
Senior Manager
Trustee in Bankruptcy/
Receiver and Manager

PROPOSED ORDER:

That the Plan be wound up in whole effective March 31, 2003 through June 30, 2003.

REASONS:

1. Cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer, pursuant to clause 69(1)(d) of the Act.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Ontario

YOUR WRITTEN NOTICE must be delivered
to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the
Registrar of the Tribunal by phone at: 416-226-
7752, toll free at: 1-800-668-0128, ext. 7752, or by
fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 13th day
of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the Pension Plan for Employees of Dyment Limited, Registration No. 0242735;

TO: Dyment Limited
1235 Bay Street
Suite 400
Toronto ON M5R 3K4
Attention: Mr. E. A. Campbell
Controller
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Dyment Limited, Registration No. 0242735 (the "Plan"), to Dyment Limited in the amount of 50% of the partial wind up surplus of \$636,915 as at August 23, 1996, plus 50% of investment earnings thereon to the date of payment, less 50% of expenses relating to the partial wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements pursuant to the Surplus Distribution Agreement set out in paragraph 5 below and any other payments to which the members, former members, and any other persons entitled to such payments have

been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **Dyment Limited is the employer as defined in the Plan (the "Employer").**
2. **The Plan was partially wound up, effective August 23, 1996.**
3. **As at August 23, 1996 the surplus in the Plan related to the partial wind up was estimated at \$636,915.**
4. **The Plan provides for payment of surplus to the Employer on the wind up of the Plan.**
5. **The application discloses that by written agreement made by the Employer and 67.9% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of partial wind up expenses is to be distributed:**
 - a) **50% to the Employer; and**
 - b) **50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.**
6. **The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related to the partial wind up of the Plan).**
7. **The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b)**



Ontario

and subsections 28(5) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 4th day of June, 2004

K. David Gordon
Deputy Superintendent, Pensions

c.c. Kerry Worgan,
Mercer Human Resource Consulting

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Philip Services Inc. Pension Plan for Intermetco Senior Management Employees**, Registration Number 687608 (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: **Philip Services Inc.**
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122

Attention: Ms. Linda Bogdanovic, Director,
Human Resources
Employer

AND TO: **Ernst & Young Inc.**
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Ms. Leslea Gordon
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 30, 2003.

REASONS:

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer, pursuant to clause 69(1)(d) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

¹ PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Ontario

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING
WITHIN THIRTY (30) DAYS, I MAY MAKE
THE ORDER PROPOSED IN THIS NOTICE.**

DATED at North York, Ontario, this 17th day
of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan of Cumba, Registration No. 0558379**;

TO: **CUMBA**
 562 Eglinton Avenue East
 Toronto ON M4P 1B9
Attention: Patricia Cormier
 Chief Administrator
 Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan of Cumba, Registration No. 0558379 (the "Plan") to CUMBA in the amount of \$32,898.50, plus investment earnings thereon to the date of payment less 50% of the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing that the member's portion of the surplus assets, as set out in the Surplus Sharing Agreement have been paid or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. CUMBA is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective February 28, 2001.

3. As at February 28, 2001, the surplus in the Plan was estimated at \$65,797.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 82% of the active members and 75% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**YOUR WRITTEN NOTICE REQUIRING A
HEARING must be delivered to:**

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004

K. David Gordon
Deputy Superintendent, Pensions

c.c. Annie Doucet,
The Standard Life Assurance Company





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for the Employees of Elias Markets Ltd.**, Registration Number 1063486 (the "Pension Plan");

TO: Standard Life Assurance Company
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Dominic Muro
Compliance Support Specialist
Group Savings and Retirement
Administrator of the
Pension Plan

AND TO: Elias Markets Ltd.
250 Tecumseh Road East
Windsor ON N8X 2R3

Attention: Joe Elias
President
Employer

AND TO: Richter & Partners Inc.
200 King Street West
Suite 1900, P.O. Box 1900
Toronto ON M5H 3T4

Attention: Jackie Glazer
Interim Receiver of Elias
Markets Ltd.

Ltd., Registration Number 1063486, be wound up in full effective August 23, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for the Employees of Elias Markets

¹ PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Ontario

ANY NOTICE REQUIRING A HEARING

shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Guelph Dolime Limited Pension Plan for Salaried and Hourly-Rated Employees**, Registration No. 0591909;

TO: Carmeuse Lime (Canada) Limited
c/o Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1A9

Attention: Jeffrey P. Sommers
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Guelph Dolime Limited Pension Plan for Salaried and Hourly-Rated Employees, Registration No. 0591909 (the "Plan"), to Carmeuse Lime (Canada) Limited in the amount of \$570,000 as at March 31, 2004, less legal fees incurred by the Company relating to the implementation and distribution of the Surplus and adjusted for investment gains and losses to the date of distribution.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all payments to which the members, former

members, and any other persons entitled to such payments have been paid or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Employer is defined in the Plan as Guelph Dolime Limited. However, the Applicant has submitted sufficient evidence that the applicant is one and the same as the Employer named in the Plan.
2. The Plan was wound up, effective September 30, 2001.
3. As at March 31, 2004, the surplus in the Plan was estimated at \$950,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and 87.5% of the former members that the surplus in the Plan as at March 31, 2004 will be distributed as follows:
 - a) 60% to the Employer; and
 - b) 40% to the Surplus Sharing Group.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 60% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) and 79(3)(b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.



Ontario

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

c.c. Hugh O'Reilly,
Cavalluzzo Hayes Shilton McIntyre & Cornish
LLP

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Retirement Income Plan for Salaried Employees of BPB Canada Inc. and Subsidiary and Associated Companies, Registration Number 210039**;

TO: **BPB Canada Inc.**
 2424 Lakeshore Road West
 Mississauga ON L5J 1K4
Attention: Mr. Keith Campbell
 Vice-President Finance and
 C.F.O.
 Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Retirement Income Plan for Salaried Employees of BPB Canada Inc. and Subsidiary and Associated Companies, Registration No. 210039 (the "Plan"), to BPB Canada Inc. in the amount of \$28,129,000 as at January 1, 2002, and adjusted for expenses and investment earnings in accordance with the surplus sharing agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. BPB Canada Inc. is the employer as defined in the Plan (the "Employer").
2. As at January 1, 2002, the surplus in the Plan on an ongoing basis was estimated

at \$73,858,000. After adjustment for holdbacks the surplus available for distribution is \$56,258,000.

3. The Plan provides for payment of surplus to the Employer while the Plan continues.
4. The application discloses that by written agreement made by the Employer, and all of the active members, all of the former members and other persons entitled to payments from the fund, and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit other than those persons who requested the administrator to do so, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related thereto).
6. The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is



Ontario

served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

Copy: Ms. Sonia Mak,
Borden Ladner Gervais LLP
Mr. Mark Zigler, Koskie Minsky
Mr. Brent Thomson
Mr. Keith Campbell
Ms. Alice Carr

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the Act Respecting the Portship Employees Negotiated Pension Plan, Registration Number 0393199 (the "Plan");

TO: Mr. Constantin Munteanu
213 Maplegrove Avenue
Bradford ON L3Z 1V3
Applicant

AND TO: Pascol Engineering
P.O. Box 10634
Thunder Bay ON P7B 6V1
Employer and
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the Act directing Pascol Engineering, formerly Port Arthur Shipbuilding Company (the "Company"), to make an additional payment from the fund for the Plan in respect of the Applicant's pension benefits or the commuted value of his pension benefits.

REASONS FOR THE REFUSAL:

1. The Applicant was employed by the Company from June 15, 1984 to October 28, 1988. The Plan is administered by the Company. The Applicant was a member of the Plan during his employment

with the Company. Eckler Partners Ltd. (the "Actuaries") were the consulting actuaries to the Plan and the pension fund was managed by GWL Investment Management Ltd. ("Great West Life"). Upon the termination of the Applicant's employment, he became entitled to a deferred pension under section 6.01 of the Plan.

2. The Trustee of the Plan had the discretion under section 9.06 of the Plan to pay the commuted value of the deferred pension owing to the Applicant in a lump sum.
3. The Applicant claims that his deferred pension or a lump sum payment in respect of his deferred pension was never paid to him. The Applicant has requested an order requiring the Company to pay the commuted value of his deferred pension from the fund for the Plan.
4. The membership data supplied by the Actuaries, shows the Applicant's status as of December 31, 1988 as "Terminated with Vesting Benefits." The membership data as of December 31, 1989, one year later, shows the Applicant's status as "Commutted Value Paid."
5. In addition, a statement supplied by Great West Life with the heading "Detail of Benefit Payments" for the Plan for the period January 1, 1989 to December 31, 1989, shows the amount of \$805.83 as having been paid to the Applicant as a withdrawal benefit.
6. Although the Administrator did not produce a copy of the cheque paid to the Applicant or the cheque number, the statement supplied by Great West Life



Ontario

demonstrates that the Applicant was paid the commuted value of his pension benefit from the Plan.

7. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the Pension Plan or pension fund is not being administered in accordance with the Pension Plan.
8. For the reasons set out above, the Superintendent is not of the opinion that the Plan is not being administered in accordance with its terms.
9. Such further reasons as may come to my attention.

7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 8th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pension Division

c.c. Mr. Charles Wrock, Wrock & Associates

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the registrar of the Tribunal by phone at: 416- 226-

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of
the Superintendent of Financial Services to
Refuse to Make an Order under section 87 of
the Act respecting a request by Peter Stopyn
and Douglas Llewellyn relating to the **Pension Plan for Members of United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, Local 67, Registration No. 381525** (the "Plan");

TO: **Peter Stopyn**
P.O. Box 71-LCD-1
Hamilton ON L8N 3A2
Applicant

AND TO: **Douglas Llewellyn**
203 East 43rd Street
Hamilton ON L8T 3C3
Applicant

AND TO: **Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67**
C/O Reliable Administrative Services Inc.
195 Dartnall Road, Suite 102
Hamilton ON L8W 3V9

Attention:
Mr. Leslie Ellerker
Chairman, Board of Trustees
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER:

- (a) Requiring the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67 (the "Board"), the Administrator of the Plan, to not suspend the retirement benefits of former members of the Plan who return to work with an employer that participates in the Plan after the commencement of their retirement benefits;
- (b) requiring the Board to limit the suspension of the retirement benefits of former members of the Plan who return to work with an employer who participates in the Plan after the commencement of retirement benefits to situations where the returning former member works more than 200 hours in any calendar year and not where the returning former member is paid for more than 200 hours where they do not work more than 200 hours; or
- (c) requiring the Trustees to amend the Plan so that the Plan text reflects the requirements listed in paragraphs (a) or (b) above as the case may be.

REASONS:

1. The Plan is a multi-employer pension plan ("MEPP") established pursuant to collective agreements and a trust agreement. The Plan covers employees represented by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the



United States & Canada, Local Union 67.
The Plan is administered by the Board.

2. The Applicants are former members of the Plan and are in receipt of retirement benefits. The Applicants are also members of the Board.
3. Prior to January 1, 1992, former members of the Plan who were in receipt of retirement benefits were permitted by the Board to return to work with a participating employer without any suspension or decrease in the amount of their retirement benefits.
4. The restated Plan text as amended to January 1, 1992 (the "1992 Restatement"), contained section 4.8 that required that if the former member is re-hired by a participating employer, the payment of the former member's retirement benefits be suspended. In such circumstances, the 1992 Restatement required that the former member become an active member of the Plan and accrue service credits in respect of the further period of employment. Upon subsequent retirement, the member's retirement benefits were to be recalculated in accordance with applicable statutory requirements, taking into account the retirement benefits that accrued during the period of re-employment.
5. Notice of the change to the re-employment provisions of the Plan was provided to members in a letter dated January 16, 1992. The Superintendent of Pensions (the predecessor to the Superintendent of Financial Services [the "Superintendent"])] registered the 1992 Restatement, including Article 4.8, on May 2, 1994.

6. The Plan provisions relating to re-employment were again amended at a Board meeting on October 13, 1999. The amendment was effective July 1, 1997 and is dated December 8, 1999 (the "1999 Amendment"). The 1999 Amendment permitted a former member to work up to 200 hours in a calendar year with a participating employer without suspension of their retirement benefits. Thereafter, the former member's retirement benefits would be suspended. Section 4.8 (as amended by the 1999 Amendment) reads as follows:

If a Pensioner is re-hired by an Employer and works in excess of 200 hours in any calendar year, payment of the Pensioner's Retirement Benefits shall thereafter be suspended, the Pensioner shall become a Member of the Plan once again and shall recommence to accrue Plan hours pursuant to the terms of the Plan. Upon subsequent retirement after such a period of re-employment under this section, the Member's Retirement Benefits shall be redetermined in accordance with the Applicable Statutory Requirements, taking into account Retirement Benefits accrued during the period of re-employment.

7. The Superintendent registered the 1997 Amendment on February 4, 2000.
8. The Board again amended section 4.8 of the Plan at a Board meeting on September 11, 2002. At that time, the Board adopted Amendment 2002-2 which amended



section 4.8 again effective July 1, 1997. The Amendment 2002-2 replaced the words "works in excess of" in the first sentence of section 4.8 with the words "is paid for more than". Amendment 2002-2 reflects the fact that a re-employed former member may work overtime hours at premium rates that increase the hours paid. Thus, a former member may reach the 200 hours paid threshold before he or she reaches the 200 hours worked threshold.

9. The Applicants have objected to the re-employment provisions of the Plan. They have objected to the suspension of retirement benefits generally. The Applicants also have objected to Amendment 2002-2 which replaces the 200 hours worked threshold with the 200 hours paid threshold.
10. The Applicants allege that the re-employment provisions of the Plan, generally, and the 200 hours paid threshold, specifically, violate the Canadian Bill of Rights, Canadian Charter of Rights and Freedoms, constitute a breach of the Board's fiduciary duties and the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act").
11. The Plan documents grant to the Board a wide power to amend the terms of the Plan. The Plan, starting with the 1992 Restatement, provides that the Plan may be amended by the Board subject to the provisions of any applicable collective agreement and the fact that no amendment should have the effect of re-vesting any portion of the pension fund in the employer. Section 10.1 of the Plan reads as follows:

This Plan may be amended or discontinued by the action of the Trustees, in accordance with any applicable provisions of the Collective Agreement, provided, however, that no such amendment shall have the effect of revesting in any Employer any part of the principal or income for purposes other than the exclusive benefit of the Members, Spouses, Beneficiaries, Dependent Children and Pensioners.

12. As such, it is within the discretion granted to the Board to amend the Plan to introduce a suspension of retirement benefits upon re-employment of a former member with or without a 200 hours worked or paid threshold. There is no basis to conclude that the adoption of the re-employment provisions constitutes an unreasonable exercise of the Board's discretion or a breach of the Board's fiduciary duties.
13. In addition, the re-employment provisions of the Plan do not violate the Act. The Board is free to amend the Plan provided that such amendments do not violate the Act and the terms of the Plan permit such amendments (as they do in this case).
14. Moreover, sections 35(3) and (4) of the Act contemplate that a pension plan member who continues employment after the normal retirement date will not be in receipt of their pension benefit payments while they continue to be employed but will continue to accrue service in the pension plan. The re-employment provisions of the Plan similarly provide for a cessation



Ontario

of pension benefits upon re-employment with a participating employer and further accrual of benefits for the period of re-employment.

15. The Applicants claim that Amendment 2002-2 violates the Act because it takes away accrued benefits from re-employed former members as the threshold has been lowered from 200 hours worked to 200 hours paid retroactively to July 1, 1997.
16. However, section 14(2) of the Act states that the prohibition against amendments that reduce accrued benefits in section 14(1) of the Act does not apply to MEPPs established pursuant to a collective agreement or a trust agreement such as the Plan. Therefore, the re-employment provisions of the Plan do not contravene the prohibition against amendments that reduce accrued benefits contained in the Act.
17. The Board's actions in adopting and amending the various re-employment provisions of the Plan do not constitute a violation of the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms. The Canadian Bill of Rights is only applicable to federal laws and the Canadian Charter of Rights and Freedoms is only applicable to governmental action. In either case, neither law has any application to the decision of the Board in adopting and amending the re-employment provisions.
18. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal")

pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal, a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, April 23rd, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Notices of Proposal to Make a Declaration That the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan")** Registration Number 0104197;

TO: PricewaterhouseCoopers Inc.
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: ABC Rail Limited
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar
Manager, Employee Benefits
Employer

AND TO: Teamsters Joint Council 79
255 Morningside Avenue
Scarborough ON
Peter Mills
President
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, the "Act" c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions has issued a Notice of Proposal to order the wind up of the Pension Plan effective November 6, 1991 pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on February 7, 2003.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Pension Plan was established effective July 9, 1987, pursuant to a collective agreement between the Employer and Teamsters Joint Council No. 9 (formerly the "Canadian Conference of Teamsters, Chemical, Energy and Allied Workers,



Ontario

Local 2175) and was registered by the Financial Services Commission (formerly the "Pension Commission of Ontario") in July 1996.

2. The Deputy Superintendent, Pensions, has issued a Notice of Proposal to order the wind up of the Pension Plan effective November 6, 1991.
3. At the date of the Administrator's appointment by the Superintendent, the Pension Plan held no assets as the Employer never made any contributions to the Pension Plan. The Pension Plan is non-contributory for Plan members.
4. The Administrator has advised that it conducted an investigation and found no evidence that the Employer has any assets in Canada that might be pursued to help fund the deficit. The Administrator further advises that the Employer's parent company, ABC Rail Products Corporation commenced Chapter 11 proceedings under the United States Bankruptcy Code in October, 2001. The Administrator said it also investigated the possibility of pursuing recovery of the Pension Plan's shortfall against the parent company in the Chapter 11 proceedings but concluded that the likelihood of recovery from this source is remote and that it is not cost effective to pursue this avenue of recovery further.

The Administrator also found no evidence of any agreement between the Employer and its parent company providing that the parent company would fund the shortfall in the Pension Plan and has concluded that there are reasonable and probable grounds

for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 11th day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited** who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439 (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,

Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator

AND TO: **Port Colborne Iron Works Limited**
PO Box 66

Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.
President
Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street

Welland ON L3B 3V6

Attention: Mr. David Ponting, Partner
Trustee in Bankruptcy
United Steelworkers of America, Local 4763
2601 Highway 20 East
Unit 7
Fonthill ON L0S 1E6

Attention : Union Representative for the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, is registered under the Act as Registration Number 289439 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on October 8, 2003; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on March 8, 2004 to make an order that the Plan be wound up effective October 25, 2002 through November 12, 2002; and
5. On March 8, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at November 12, 2002 is \$378,900 with a wind up funded ratio of 59.9% for the Plan; and
7. The Administrator has requested the Superintendent's approval to commence



pensions to new retirees at the reduced level of 59.9% until further notice.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Port Colborne Iron Works, Limited, was adjudged bankrupt on February 11, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 59.9%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be of the order of \$378,900.00.
4. The trustee in bankruptcy has advised the Administrator that unsecured creditors such as the Plan cannot expect more than 25% of their claim to be settled from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of United Tire & Rubber Co. Limited** Represented by United Steel Workers of America, Local 3950 (the "Pension Plan"), Registration Number 0424671;

TO: PricewaterhouseCoopers Inc.
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8

Attention: Lois J. Reyes
Manager
Administrator of the
Pension Plan

AND TO: United Tire & Rubber Co. Limited
275 Belfield Road
Rexdale ON M9W 5C6

Attention: Raymond J. Fernandes
Chief Financial Officer
Employer
Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Rick Kanabar
Manager
**Receiver and Manager for
United Tire & Rubber Co.
Limited**

AND TO:
Attention: Schonfeld Inc.
Suite 2400, 390 Bay Street
Toronto ON M5T 1N1
Harlan Schonfeld
**Trustee in Bankruptcy for
United Tire & Rubber Co.
Limited**

AND TO:
Attention: United Steel Workers of
America, Local 3950
234 Eglinton Avenue East
Suite 800
Toronto ON M4P 1K7

Attention: Jeff Richardson
National Representative
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950, Registration No. 0424671 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the *Pension Benefits Guarantee Fund* (the "Guarantee Fund") by the Act or the regulations made thereunder; and



3. The Pension Plan was wound up effective March 14, 2000; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on May 18, 2000.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$315,302 as at March 14, 2000 and an estimated claim against the Guarantee Fund as at March 14, 2000 of \$288,744. Furthermore, the Actuarial Certification filed by the Administrator and dated March 16, 2004, stipulates that there will be a claim against the Guarantee Fund as at July 1, 2004.
2. Ernst & Young was appointed Receiver and Manager of United Tire & Rubber Co. Limited on February 15, 2000 and Schonfeld Inc. was appointed Trustee in Bankruptcy on March 14, 2000.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of United Tire & Rubber Co. Limited to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 31st day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited**, Registration Number 0975045 (the "Pension Plan");

TO: PricewaterhouseCoopers Inc.
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8

Attention: Tony Karkheck
Senior Vice President
Administrator of the Pension Plan

AND TO: Cold Metal Products Limited
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2

Attention: Soheil Monzavi
General Manager
Employer
Richter & Partners
200 King Street West
Suite 1900
Toronto ON M5H 3T4

Attention: Javed Rasool
Trustee in Bankruptcy for Cold Metal Products Limited

AND TO: The United Steelworkers of America Local, 4444
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3

Attention: Roy Leslie
Staff Representative Union

AND TO: The United Steelworkers of America Local, 7625
4115 Ontario East
Montreal PQ H1V 1J7

Attention: Gaetan Pare
Local President Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and



Ontario

3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal to order the wind up of the Pension Plan effective March 17, 2003, pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on June 16, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The last full Actuarial Valuation Report for this Pension Plan was produced by the Plan actuary as of December 31, 1999. The Pension Plan was reported to have a 98% transfer ratio at that date. Subsequent to December 31, 1999, the actuary prepared Interim Actuarial Opinions on the Pension Plan on several occasions, most recent being as of December 31, 2002. As of December 31, 2002, the funded ratio of the Pension Plan was reported to be 66%.

Following its appointment, the Administrator requested the actuary prepare a preliminary estimate of the wind up liabilities of the Pension Plan as of March 31, 2003. The actuary estimated the wind up funded ratio as 55% on assets and liabilities of \$7,622,644, and \$12,154,000, respectively.

2. Richter and Partners Inc. was appointed Interim Receiver of Cold Metal Products Limited on March 17, 2003 and Trustee in Bankruptcy on March 24, 2003.

3. The Trustee in Bankruptcy has advised the Administrator that no assets are expected to become available for distribution to ordinary creditors of the bankrupt estate.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 8th day of April, 2003.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Moyer Vico Corp.**, Registration Number 465070;

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Pauline Frenette
Associate Consultant
Administrator

AND TO: Moyer Vico Corp.
25 Milvan Drive
Weston ON M9L 1Z1

Attention: Adam Okhai
President & CEO.
Employer

AND TO: Mintz and Partners Limited
1446 Don Mills Road, Suite 100
Don Mills ON M3B 3N6

Attention: Daniel R. Weisz
Senior Vice-President
Trustee in Bankruptcy

AND TO: Industrial Wood & Allied Workers of Canada,
Local 1-700
2088 Weston Road
Toronto ON M9N 1X4

Attention: Ron Diotte
President, Local 1-700
Union representative for the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Moyer Vico Corp. (the "Plan"), is registered under the Act as Registration Number 465070; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On October 26, 2000, the Superintendent of Financial Services (the "Superintendent") issued an Order that the Plan was to be wound up effective October 16, 2002; and
4. On July 10, 2002, the Superintendent appointed Morneau Sobeco as administrator of the Plan to replace the prior appointed Administrator, Arthur Andersen Inc.; and
5. On February 11, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002; and
6. On March 18, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, based upon the said wind up report; and
7. On March 31, 2004, the Superintendent approved distribution of the Plan's assets in accordance with the wind up report, conditional upon any additional funding that may be required from the Guarantee Fund with respect to the defined benefits under the Plan.



Ontario

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the defined benefit portion of the Plan to which the Guarantee Fund would apply, to be 5.91%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the Administrator to be \$107,739.00.
3. The Employer was assigned into bankruptcy on November 13, 1997.
4. The trustee in bankruptcy for Moyer Vico Corp. has advised the Administrator that there are no funds available from the bankrupt Employer's estate for distribution to the Plan.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of the Employer, the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is

served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 27th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Ryancon, Registration Number 298430** (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Appointed Administrator
AND TO: Ryancon
144 Sharer Road
Vaughan ON L4L 8P4
Attention: John D. Hains,
Chief Financial Officer
Employer
AND TO: BDO Dunwoody Limited
33 City Centre Drive, Suite 680
Mississauga ON L5B 2N5
Attention: Mr. Darryl McConnell,
Senior Manager
Trustee in Bankruptcy/
Receiver and Manager

2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on December 17, 2003; and
4. On March 15, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
5. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at August 31, 2003 is \$1,421,000, with a wind up funded ratio of 75.78% for the Plan; and
6. The Administrator has cutback all pensioners to the estimated funded ratio effective March 1, 2004 until further notice; and
7. On May 13, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to wind up the Plan effective March 31, 2003 through June 30, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Ryancon, was adjudged bankrupt on November 7, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 75.78%.
3. The Administrator has estimated the deficit in the plan as of as at August 31, 2003 to be \$1,421,000.
4. The trustee in bankruptcy has advised the Administrator that there are not enough

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Ryancon is registered under the Act as Registration Number 298430 (the "Plan"); and



funds available for full distribution to the ordinary unsecured creditors.

5. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING
shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 4th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration Number 680405** (formerly C-104311) (the "Plan");

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
1 Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Pauline Frenette
Associate Consultant
Administrator

AND TO: **Striker Paper Canada, Inc.**
100 Ormond Street South
P.O. Box 10,
Thorold ON L2V 3Y7

Attention: Ms. Patricia Gough
Manager
Employer

AND TO: **BDO Dunwoody Limited**
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mr. Mark Chow
Trustee in Bankruptcy
Communications, Energy
and Paper Workers Union
of Canada
5890 Aspen Court
Niagara Falls ON L2G 7V3

Attention: Michael Lambert
National Representative
Union Representative for
the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division) is registered under the Act as Registration Number 680405 (formerly C-104311) (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 10, 2002; and
4. The Superintendent of Financial Services issued an Order that the Plan be wound up effective February 22, 1999; and
5. The distribution of assets of the Plan proposed by the wind up report was approved by the Superintendent of Financial Services on April 19, 2005, subject to any additional funding that may be required from the Guarantee Fund; and
6. On March 5, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The wind up report identified a deficit in the Plan as at February 22, 1999 of \$349,343 and a wind up funded ratio of 0.0%, with



an estimated claim against the Guarantee Fund of \$331,601.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Striker Paper Canada Inc. was adjudged bankrupt on March 22, 2000.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 0.0%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be \$331,601.00.
4. The trustee in bankruptcy has advised the Administrator that there are no funds available for the Plan from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098, Registration Number 347047** (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Administrator

AND TO: Philip Services Inc.
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122

Attention: Ms. Linda Bogdanovic
Director, Human Resources
Employer

AND TO: Ernst & Young Inc.
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Ms. Leslea Gordon
Trustee in Bankruptcy
United Steelworkers of America, Local 6098
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Charlie Scibetta
Union Representative for
the Members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098 is registered under the Act as Registration Number 347047 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
4. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed trustee in bankruptcy on December 30, 2003; and
5. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on March 19, 2004; and
6. On April 2, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The Administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is \$1,373,000; and
8. The Administrator filed a proof of claim on March 31, 2004 with the trustee in



bankruptcy for an amount of \$1,800,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and

9. The trustee in bankruptcy has advised the Administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be \$1,373,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is

served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

¹ - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6920, Registration Number 474932** (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Administrator

AND TO: Philip Services Inc.
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122

Attention: Ms. Linda Bogdanovic
Director, Human Resources
Employer

AND TO: Ernst & Young Inc.
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Ms. Leslea Gordon
Trustee in Bankruptcy
United Steelworkers of America, Local 6920
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

AND TO:

Attention: Mr. Charlie Scibetta
Union Representative for the Members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6920 is registered under the Act as Registration Number 474932 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
4. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed trustee in bankruptcy on December 30, 2003; and
5. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on March 19, 2004; and
6. On April 2, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The Administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is \$1,777,000; and
8. The Administrator filed a proof of claim on March 31, 2004 with the trustee in



Ontario

bankruptcy for an amount of \$2,181,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and

9. The trustee in bankruptcy has advised the Administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be \$1,777,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is

served on you, you deliver to the Tribunal a written notice that you require a hearing.¹

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan");

TO: PricewaterhouseCoopers Inc.
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Tony Karkheck
Senior Vice President
Administrator of the Pension Plan

AND TO: ABC Rail Limited
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar
Manager, Employee Benefits
Employer

ORDER

ON the 5th day of February 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 5th day of February, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Employees Retirement System of ABC Rail Limited, Registration Number 0104197.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Employees Retirement System of ABC Rail Limited, Registration Number 0104197, be wound up in whole effective November 6, 1991, for the following reasons:

1. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
2. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Teamsters Joint Council 79
255 Morningside Avenue
Scarborough ON

Attention: Peter Mills
President
Union

DATED at Toronto, Ontario, this 1st day of April, 2004.

Tom Goltetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Mosler Canada Inc. Pension Plan for Salaried Employees**, Registration Number 941732 (the "Plan");

TO: **Canada Life Assurance Company**

330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin
Plan Wind-up Consultant,
Investments & Pensions
Appointed Administrator

AND TO: **Mosler Canada Inc.**
150 Britannia Road East, Unit12

Mississauga ON L4Z 2A4
Attention: Ms. Janet Leigh
Employer

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant part of the business has been discontinued at a specific location pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 8th day of April, 2004.

Tom Galfetto
Director, Pension Plans Branch

ORDER

ON or about October 20, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 20, 2003 to make an Order that the Plan be wound up in whole effective September 23, 2001 pursuant to section 69(1) of the Act.

NO request for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective September 23, 2001.





IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Salaried Employees of Finlayson Enterprises Ltd.**, Registration Number 247593 (the "Plan");

TO: The Manufacturers Life Insurance Company
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6
Attention: Ms. Darlene Stegner
Plan Design Specialist
Administrator

AND TO: Finlayson Enterprises Ltd.
1510B Caterpillar Road
Mississauga ON L4X 2W9
Attention: Ms. Victoria Mayers,
Vice-President and Controller.
Employer

AND TO: Deloitte & Touche Inc.
Suite 1900
79 Wellington Street West
PO Box 29, TD Centre
Toronto ON M5K 1B9
Attention: Mr. Wes Treleaven
Senior Vice-President
Trustee in Bankruptcy
Shiner Zweig Inc.
10 West Pierce Street, Suite 4
Richmond Hill ON L4B 1B6
Attention: Mr. Wes Treleaven
Senior Vice-President
Receiver & Manager

ORDER

ON or about February 24, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated February 24, 2004 to make an Order that the Plan be wound up in whole effective January 6, 2003, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective January 6, 2003.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. The Employer's business has been sold and the successor employer does not provide a pension plan the employees acquired, pursuant to clause 69(1)(f) of the Act.

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Goltetto
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for the Employees of Greenspoon Bros. Limited, Registration Number 258889** (the "Plan");

TO: The Manufacturers Life Insurance Company
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Darlene Stegner
Plan Design Specialist
Administrator

AND TO: Greenspoon Bros. Limited
16 Melanie Drive
Brampton ON L6T 4K9

Attention: Mr. Ira Greenspoon
Vice-President, Finance
Employer

AND TO: Mandelbaum Spergel Inc.
505 Consumers Road, Suite 200
Toronto ON M2J 4V8

Attention: Mr. Bryan Gelman
Trustee in Bankruptcy

ORDER

ON or about February 20, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated February 20, 2004 to make an Order that the Plan be wound up in whole effective April 30, 2003, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective April 30, 2003.

REASONS:

1. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Goltetto
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439** (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,

Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator
AND TO: Port Colborne Iron Works Limited
Mr. Tony Karkheck

PO Box 66
Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.
President
Employer
AND TO: BDO Dunwoody Limited
37 Dorothy Street
Welland ON L3B 3V6
Mr. David Ponting
Partner

Trustee in Bankruptcy

ORDER

ON or about March 8, 2004 the Deputy Superintendent, Pensions, issued a Notice of

Proposal dated March 8, 2004 to make an Order that the Plan be wound up in whole effective October 25, 2002 through November 12, 2002, pursuant to section 69(1) of the Act.

NO request for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I **THEREFORE ORDER** that the Plan be wound up in whole effective October 25, 2002 through November 12, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer pursuant to clause 69(1)(d) of the Act.

DATED at North York, Ontario, this 3rd day of May, 2004.

Tom Goltetto
Director, Pension Plans Branch



Ontario

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited**, Registration Number 0975045 (the "Pension Plan");

TO: PricewaterhouseCoopers Inc.
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto-Dominion Centre
Toronto ON M5G 1G8

Attention: Tony Karkheck
Senior Vice President
Administrator

AND TO: Cold Metal Products Limited
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2

Attention: Soheil Monzavi
General Manager
Employer

AND TO: Richter & Partners
200 King Street West
Suite 1900
Toronto ON M5H 3T4

Attention: Javed Rasool
Trustee in Bankruptcy for
Cold Metal Products
Limited

ORDER

ON the 20th day of February, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of February, 2004, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), to the Administrator and to the Employer to wind up in whole the Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045, be wound up in whole, effective March 17, 2003, for the following reasons:

1. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
2. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganisation of the business of the Employer.
3. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.
4. All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of.



Ontario

and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's Pension Plan who become employees of the person.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

TO: **The United Steelworkers of America Local, 4444**
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3

Attention: Roy Leslie
Staff Representative
Union

AND TO: **The United Steelworkers of America Local, 7625**
4115 Ontario East
Montreal PQ H1V 1J7

Attention: Gaetan Pare
Local President
Union

DATED at Toronto, Ontario this 13th day of May, 2004.

Tom Galfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995** (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney
Administrator of the
Pension Plan

AND TO: Fantom Technologies Inc.
PO Box 1004
Welland ON L3B 5S1

Attention: Norm Wotherspoon
Treasurer
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995, be wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers
Inc.
145 King Street West
Toronto ON M5H 1V8



Attention: Catherine Hristow
Vice President
**Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc**
The United Steelworkers of
America Local 6444,
District 6
234 Eglinton Avenue East
Toronto ON M4P 1K5

Attention: Robert Heally and Brian
Greenaway
Union

DATED at Toronto, Ontario, this 13th day of
May, 2004.

Tom Goltetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



Ontario

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810** (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney
Administrator of the
Pension Plan

AND TO: Fantom Technologies Inc.
PO Box 1004
Welland ON L3B 5S1

Attention: Norm Wotherspoon
Treasurer
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal")

within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810, be wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

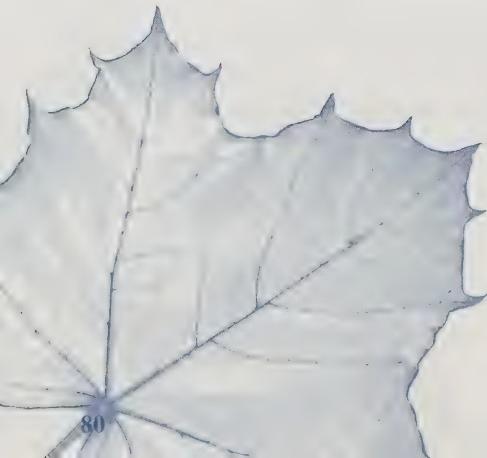
PricewaterhouseCoopers
Inc.
145 King Street West
Toronto ON M5H 1V8



Attention: Catherine Hristow
Vice President
**Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc**

DATED at Toronto, Ontario, this 13th day of
May, 2004.

Tom Goltetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services





Ontario

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148** (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Al Kiel
Partner
**Administrator of the
Pension Plan**

AND TO: General Publishing Co.
Limited
895 Don Mills Road
400-2 Park Centre
Toronto ON M3C 1W3

Attention: Mary Hainey
Manager Human Resources
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 22nd day of March, 2004, pursuant to subsection 69(1) of the Act to the Administrator and to the Employer to wind up in whole Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148, be wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:



Deloitte & Touche Inc.
79 Wellington Street West
Maritime Life Tower
Toronto Dominion Centre,
P.O. Box 29
Toronto ON M5K 1B9

Attention: Paul Denton
Director, Financial Advisory
Services
Trustee in Bankruptcy for
General Publishing Co.
Limited
Graphic Communications
International Union
Local 500M
324 Prince Edward Drive
Suite 10
Toronto ON M8Y 3Z5
Attention: John Bickford
Office Manager
Union

DATED at Toronto, Ontario, this 25th day of
May, 2004.

Tom Gelfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services





Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act, respecting **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc., Registration Number 1059146** (the "Pension Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Bethune Whiston
Principal
Administrator of the Pension Plan

AND TO: Maksteel Inc.
7615 Torbram Road
Mississauga ON L4T 4A8

Attention: Jerry Sauer
Manager Human Resources
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 22nd day of March, 2004, pursuant to subsection 69(1) of the Act to the Administrator and to the Employer to wind up in whole Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146, be wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:



Ernst & Young Inc.
222 Bay Street, 16th Floor
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Sharon Hamilton
Manager
Interim Receiver for
Maksteel Inc.

AND TO: **United Steelworkers of**
America Local 5958
1031 Barton Street East
Hamilton ON L8L 3E3

Attention: Bryan Adamczyk
Staff Representative
Union

DATED at Toronto, Ontario, this 4th day of
June, 2004.

Tom Goltetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171** (the "Pension Plan");

TO: London Life Assurance Company
255 Dufferin Avenue
London ON N6A 4K1
Attention: Darlene Sundercock
Wind-up Specialist
Group Retirement Services
Administrator of the
Pension Plan

AND TO: Denton Technologies Inc.
30 Casebridge Court
Scarborough ON M1B 3M5
Attention: Judy Coish
Office Manager
Employer

ORDER

ON the 28th day of January 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 28th day of January, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171, be wound up in full effective December 13, 2001 for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer failed to make contributions to the pension fund as required by the Act or regulations.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Grant Thornton Limited
PO Box 55, Royal Bank Plaza
19th Floor, South Tower
Toronto ON M5J 2P9

Attention: Jonathan Krieger, CA, CIRP
Vice President
Trustee in Bankruptcy and
Receiver of Denton
Technologies Inc.

DATED at Toronto, Ontario, this 28th day of June, 2004.

Tom Goltetto
Director, Pension Plans Branch by Delegated Authority from the Superintendent of Financial Services



Consents to Payments of Surplus Out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Hanson & Wells Inc.**, Registration No. 909713;

TO: McGean-Rohco, Inc.
c/o Torkin Manes Cohen
Arbus LLP
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Attention: Warren S. Rapoport
Agent for McGean-Rohco, Inc.
Applicant

CONSENT

ON or about January 28, 2004, the Superintendent of Financial Services caused to be served on McGean-Rohco, Inc. a Notice of Proposal dated January 28, 2004 to consent, pursuant to subsection 78(1) of the Act, to a payment out of the Pension Plan for Employees of Hanson & Wells Inc., Registration No. 909713 (the "Plan"), to McGean-Rohco, Inc., in the amount of \$368,855.50 (representing 50% of the Wind Up Surplus in the Plan of \$737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan

Administrator in the administration and wind up of the Plan, and minus \$25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities, all of the above being in accordance with the terms of the Surplus Sharing Agreement dated March 19, 2002.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Plan to McGean-Rohco, Inc. the amount of \$368,855.50 (representing 50% of the Wind Up Surplus in the Plan of \$737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan Administrator in the administration and wind up of the Plan, and minus \$25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.



Ontario

DATED at Toronto, Ontario, this 26th day of March, 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Ms. Sharon Carew
Director, Global Human
Resources
PricewaterhouseCoopers
Inc.
Ms. Dona L. Campbell
Sack Goldblatt Mitchell





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807;**

TO: **WCI Canada Inc.**
866 Langs Drive
Cambridge, Ontario
N3H 2N7

Attention: Richard Laba
President
Applicant and Employer

CONSENT

ON or about January 6, 2004, the Superintendent of Financial Services caused to be served on WCI Canada Inc. a Notice of Proposal dated January 6, 2004 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No.0427807, to WCI Canada Inc. in the amount of \$286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807, to WCI Canada Inc. in the amount of \$286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

DATED at Toronto, Ontario, this 26th day of March, 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Marc Vigneault - Standard Life



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404**;

TO: Valeo Engine Cooling Company
4100 North Atlantic Blvd.
Auburn Hills, MI
48326 USA

Attention: Mr. Jerome Pedretti
Employer and
Administrator of the Plan

CONSENT

ON or about March 1, 2004, the Superintendent of Financial Services caused to be served on Valeo Engine Cooling, Company a Notice of Proposal dated March 1, 2004, to consent, pursuant to subsection 78(1) of the Act, to the payment out of the Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404, to Valeo Engine Cooling, Company in the amount of \$1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant

or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404, to Valeo Engine Cooling, Company in the amount of \$1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements, including benefits and benefit enhancements pursuant to the surplus sharing agreement dated April 30, 2002, between the Applicant and all members and former members of the Plan (as defined in the application), and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of April, 2004.

Tom Goltfatto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Paul Lither,
Osler Hoskin & Harcourt LLP
Michael Mazzuca
Koskie Minski



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Federal White Cement Limited Pension Plan for Designated Executives, Registration Number 0996819**;

TO: **Federal White Cement Limited**
 P.O Box 548
 Woodstock ON N4S 7Y5
Attention: Mr. Antonio M. A. Lopes, CA,
 MBA
 Controller

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819, to Federal White Cement Limited in the amount of \$173,300 as at December 31, 2002, plus interest, at the fund rate of return thereon, to the date of payment.

DATED at Toronto, Ontario, this 21st day of May, 2004.

Tom Goltetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

CONSENT

ON or about December 1, 2003, the Superintendent of Financial Services caused to be served on Federal White Cement Limited a Notice of Proposal dated November 25, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819, to Federal White Cement Limited in the amount of \$173,300 as at December 31, 2002, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.



Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Agnew Group Inc. Retirement Plan, Registration Number 0552802** (the "Plan");

TO: **PricewaterhouseCoopers Inc.**
c/o McMillan Binch LLP
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3
Attention: Susan Nickerson
Applicant

CONSENT

ON or about April 6, 2004, the Superintendent of Financial Services caused to be served on PricewaterhouseCoopers Inc. (Receiver and Manager of the assets of Agnew Group Inc.) a Notice of Proposal dated April 6, 2004, to consent, pursuant to subsection 78(1) of the Act, to the payment out of the Agnew Group Inc. Retirement Plan, Registration Number 0552802, to PricewaterhouseCoopers Inc. in the amount of \$505,430 (representing 35% of the Wind Up Surplus in the Plan of \$1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant

or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Agnew Group Inc. Retirement Plan, Registration Number 0552802, to PricewaterhouseCoopers Inc. in the amount of \$505,430 (representing 35% of the Wind Up Surplus in the Plan of \$1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits including members' share of the negotiated surplus and any other payments to which members, former members, and any other persons are entitled under the Plan have been paid purchased or otherwise provided for.

DATED at Toronto, Ontario, this 28th day of May, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Al Kiel, Morneau Sobeco



Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans - Subsection 83(1) of the *Pensions Benefits Act*

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc.**, Registration Number 995522;

TO: PricewaterhouseCoopers Inc.
PO Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Ms. Lois Reyes
Human Resource Services
Administrator
AND TO: Sealcraft Inc.
6525 Northam Dr.
Mississauga ON L4V 1J2
Attention: Ms. Joan Shepherd, Personnel Manager
Employer
AND TO: Schwartz Levitsky Feldman Inc.
1167 Caledonia Road
Toronto ON M6A 2X1
Attention: Mr. Richard Kline
Trustee in Bankruptcy

DECLARATION

WHEREAS

1. The Pension Plan for Employees of Sealcraft Inc., (the "Plan"), is registered under the Act as Registration Number 995522 and

2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on December 23, 2002; and
4. On January 9, 2004, the Superintendent of Financial Services issued an Order that the Plan is to be wound up effective October 16, 2002; and
5. On January 16, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002, which report is currently under review by staff who have requested additional information from the Administrator ; and
6. On January 16, 2004, the Administrator also filed an application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the wind up funded ratio of the Plan to be 52.1%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be \$410,800.
3. The Employer, Sealcraft Inc., was assigned into bankruptcy on October 28, 2002.
4. The trustee in bankruptcy for Sealcraft inc. had advised the Administrator that there



Ontario

are no funds available for distribution to the ordinary unsecured creditors.

5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of Sealcraft Inc., the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Galfetto
Director, Pension Plans Branch





IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited** who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439 (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator

AND TO: **Port Colborne Iron Works Limited**
PO Box 66
Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.
President
Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street
Welland ON L3B 3V6

Attention: Mr. David Ponting, Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4763**
2601 Highway 20 East
Unit 7
Fonthill ON L0S 1E6

Attention: **Union Representative for the members of the Plan**

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented By The United Steel Workers of America, is registered under the Act as Registration Number 289439 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on October 8, 2003; and
4. On March 8, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan; and
5. On March 22, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
6. On May 3, 2004, the Superintendent of Financial Services issued an order that the Plan be wound up effective October 25, 2002 through November 12, 2002; and
7. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at November 12, 2002 is \$378,900 with a wind up funded ratio of 59.9% for the Plan; and
8. On March 19, 2004, the Superintendent approved commencement of pensions to



Ontario

new retirees at the reduced level of 59.9% until further notice; and

9. As of May 5, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration referred to in 5. above.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Port Colborne Iron Works, Limited, was adjudged bankrupt on February 11, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 59.9%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be of the order of \$378,900.
4. The trustee in bankruptcy has advised the Administrator that unsecured creditors such as the Plan cannot expect more than 25% of their claim to be settled from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario this 21st day of May, 2004.

Tom Gelfetto
Director, Pension Plans Branch



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P. 8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by
the Superintendent of Financial Services
to make a Declaration under Section 83 of
the Act respecting the **Pension Plan for the
Employees of United Tire & Rubber Co.
Limited Represented by United Steel Workers
of America, Local 3950, (the "Pension Plan")
Registration Number 0424671;**

TO: PricewaterhouseCoopers
Inc.
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8

Attention: Lois J. Reyes
Manager
**Administrator of the
Pension Plan**

AND TO: United Tire & Rubber Co.
Limited
275 Belfield Road
Rexdale ON M9W 5C6

Attention: Raymond J. Fernandes
Chief Financial Officer
Employer

AND TO: Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7
Rick Kanabar
Manager
**Receiver and Manager for
United Tire & Rubber Co.
Limited**

AND TO: Schonfeld Inc.

Suite 2400, 390 Bay Street
Toronto ON M5T 1N1
Harlan Schonfeld
Trustee in Bankruptcy for
United Tire & Rubber Co.
Limited
United Steel Workers of
America, Local 3950
234 Eglinton Avenue East
Suite 800
Toronto ON M4P 1K7

Attention: Jeff Richardson
National Representative
Union

DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950, Registration No. 0424671 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 14, 2000; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the



Ontario

administrator (the "Administrator") of the Pension Plan on May 18, 2000; and

5. On March 31, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated March 31, 2004 to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$315,302 as at March 14, 2000 and an estimated claim against the Guarantee Fund as at March 14, 2000 of \$288,744. Furthermore, the Actuarial Certification filed by the Administrator and dated March 16, 2004 stipulates that there will be a claim against the Guarantee Fund as at July 1, 2004.
2. Ernst & Young was appointed Receiver and Manager of United Tire & Rubber Co. Limited on February 15, 2000, and Schonfeld Inc. was appointed Trustee in Bankruptcy on March 14, 2000.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of United Tire & Rubber Co. Limited to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for

considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 25th day of May, 2004.

Tom Galfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the PBA respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan")** Registration Number 0104197;

TO: PricewaterhouseCoopers Inc.
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: ABC Rail Limited
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar
Manager, Employee Benefits
Employer

AND TO: Teamsters Joint Council 79
255 Morningside Avenue
Scarborough ON
Peter Mills
President
Union

Attention: Peter Mills
President
Union

DECLARATION

WHEREAS:

1. The Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, the "Act" c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 6, 1991; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on February 7, 2003; and
5. On March 11, 2004, I issued a Notice of Proposal dated March 11, 2004, to make a Declaration that the PBGF applies to the Pension Plan; and
6. Nonotice requiring a hearing by the Financial Services Tribunal, pursuant subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Pension Plan was established effective July 9, 1987 pursuant to a collective agreement between the Employer and Teamsters Joint Council No. 9 (formerly the "Canadian Conference of Teamsters,



Ontario

Chemical, Energy and Allied Workers, Local 2175) and was registered by the Financial Services Commission (formerly the "Pension Commission of Ontario") in July 1996.

2. On April 1, 2004, I issued an order to wind up the Pension Plan effective November 6, 1991 pursuant to section 69 of the Act.
3. At the date of the Administrator's appointment by the Superintendent, the Pension Plan held no assets as the Employer never made any contributions to the Pension Plan. The Pension Plan is non-contributory for plan members.
4. The Administrator has advised that it conducted an investigation and found no evidence that the Employer has any assets in Canada that might be pursued to help fund the deficit. The Administrator further advises that the Employer's parent company, ABC Rail Products Corporation commenced Chapter 11 proceedings under the United States Bankruptcy Code in October, 2001. The Administrator said it also investigated the possibility of pursuing recovery of the Pension Plan's shortfall against the parent company in the Chapter 11 proceedings but concluded that the likelihood of recovery from this source is remote and that it is not cost effective to pursue this avenue of recovery further.

The Administrator also found no evidence of any agreement between the Employer and its parent company providing that the parent company would fund the shortfall in the Pension Plan and has concluded that there are reasonable and probable grounds for

considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 26th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Moyer Vico Corp.**, Registration Number 465070;

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Pauline Frenette
Associate Consultant
Administrator

AND TO: Moyer Vico Corp.
25 Milvan Drive
Weston ON M9L 1Z1

Attention: Adam Okhai, President & CEO.
Employer

AND TO: Mintz and Partners Limited
1446 Don Mills Road, Suite 100
Don Mills ON M3B 3N6

Attention: Daniel R. Weisz,
Senior Vice-President
Trustee in Bankruptcy

AND TO: Industrial Wood & Allied
Workers of Canada,
Local 1-700
2088 Weston Road
Toronto ON M9N 1X4

Attention: Ron Diorfe, President,
Local 1-700
**Union representative for the
members of the Plan**

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Moyer Vico Corp. (the "Plan"), is registered under the Act as Registration Number 465070; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On October 26, 2000, the Superintendent of Financial Services (the "Superintendent") issued an Order that the Plan was to be wound up effective October 16, 2002; and
4. On July 10, 2002, the Superintendent appointed Morneau Sobeco as Administrator of the Plan to replace the prior appointed Administrator, Arthur Andersen Inc.; and
5. On February 11, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002; and
6. On March 18, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, based upon the said wind up report; and
7. On March 31, 2004, the Superintendent approved distribution of the Plan's assets in accordance with the wind up report, conditional upon any additional funding that may be required from the Guarantee Fund with respect to the defined benefits under the Plan; and
8. On April 27, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
9. As of June 14, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration.



NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the defined benefit portion of the Plan to which the Guarantee Fund would apply, to be 5.91%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the administrator to be \$107,739.00.
3. The Employer was assigned into bankruptcy on November 13, 1997.
4. The trustee in bankruptcy for Moyer Vico Corp. has advised the Administrator that there are no funds available from the bankrupt Employer's estate for distribution to the Plan.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of the Employer, the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario this 18th day of June, 2004.

Tom Gelfetto
Director, Pension Plans Branch





Allocations of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Act relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited**, Registration Number 384313 ("the Plan");

AND TO: **United Steelworkers of America, Local 4433**
2601 Highway 20, East
Unit 7
Fonthill ON LO5 1E6
Attention: Bryan Adamczyk
Union representative of the plan members

ALLOCATION

WHEREAS on the 27th day of August, 2003, the Superintendent of Financial Services declared, pursuant to sections 83 and 85 of the Act, that the Pension Benefits Guarantee fund (the "Guarantee Fund") applies to the Plan,

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.S.O. 1990, e.g. 909, under the Act (the "Regulation"), an amount not to exceed \$3,888,700.00 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario this 20th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions
By Delegated Authority from the
Superintendent of Financial Services.

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Mr. David R. Kearney
Appointed Plan Administrator
(“Administrator”)

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9
Attention: Charlotte Watson
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8
Attention: Ronald Bake
President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1
Attention: Robert Paul
Partner
Trustee in Bankruptcy



Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc.**, (the "Pension Plan") Registration Number 0335802;

but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

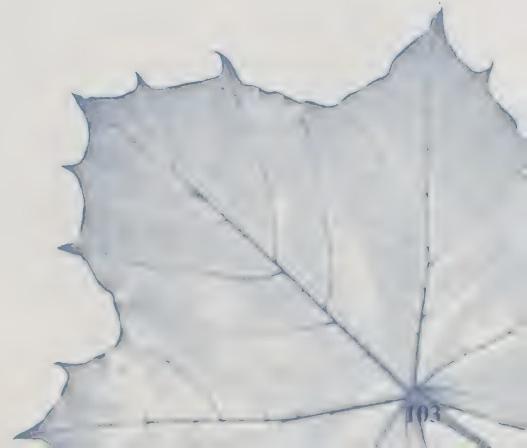
TO: Morneau Sobeco
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Robin Pond, MBA, CFA
Partner
Administrator of the
Pension Plan

THIRD ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$287,300,000 (Third Allocation) which together with the Interim Allocation, the Second Interim Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting **The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, (the "Pension Plan")** Registration Number 0335810;

TO: Morneau Sobeco
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Robin Pond, MBA, CFA
Partner
Administrator of the
Pension Plan

THIRD ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$42,700,000 (Third Allocation) which together with the Interim Allocation, the Second Interim Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund

but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions



Ontario

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P. 8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan**, Registration Number 1039981;

TO: Morneau Sobeco
895 Don Mills Road
One Morneau Sobeco Centre
Suite 700
Toronto ON M3C 3W3
Attention: Mr. David R. Kearney
Administrator
AND TO: Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Mr. Philip Kan, Manager
Trustee in Bankruptcy for
Gallaher Thorold Paper Co.
AND TO: International Union of
Operating Engineers
Local 772
370 Main Street East, Suite 302
Hamilton ON L8N 1J6
Attention: Greg Hoath, President
Union representing
members of the Plan

AND TO: Communications Energy
and Paper Workers Union
of Canada
Locals 290 and 1521
5890 Aspen Court
Niagara Falls ON L2G 7V3
Attention: Michael Lambert
Union representing
members of the Plan

ALLOCATION

WHEREAS on the 8th day of January, 2003 a declaration was issued pursuant to sections 83 and 89 of the Act that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$6,383,240.00 determined as of April 1, 2004 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 18th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan")** Registration Number 0104197;

provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 26th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

TO: PricewaterhouseCoopers Inc.
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Lois J. Reyes
Manager
Administrator of the
Pension Plan

INTERIM ALLOCATION

WHEREAS on May 26th, 2004, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an interim amount not to exceed \$113,860 which together with the a final Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guaraptee Fund but not required to



Ontario

FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointment of FST Board Members

O.C.	Effective Appointment Date	Expiry Date
<i>McNairn, Colin (Vice-Chair)</i>		
O.C. 1192/2004	June 9, 2004	September 8, 2004
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<i>Corbett, Anne (Vice-Chair Acting)</i>		
O.C. 1193/2004	June 9, 2004	September 8, 2004
O.C. 1438/2001	June 20, 2001	June 19, 2004**
<i>Ashe, Kevin</i>		
O.C. 1510/2002	September 26, 2002	September 25, 2005
<i>Bharmal, Shiraz Y.M.</i>		
O.C. 1511/2002	September 9, 2002	September 8, 2005
<i>Erlichman, Louis</i>		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<i>Gavin, Heather</i>		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
<i>Litner, Paul W.</i>		
O.C. 1512/2002	September 9, 2002	September 8, 2005
<i>Moore, C.S. (Kit)</i>		
O.C. 1194/2004	June 9, 2004	September 8, 2004
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<i>Short, David A.</i>		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
<i>Vincent, J. David</i>		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

** Or on the day FSCO/OSC merges, if earlier.



Pension Hearings Before the Financial Services Tribunal

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The Consent Order dated October 22, 2002, extended the time for the Superintendent's response under this Order.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order



Ontario

directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions. The April 28, 2003 pre-hearing conference did not proceed at the request of the parties. On May 30, 2003, the parties asked that the matter continue to be adjourned sine die pending resolution of the issues in the proceeding. On May 12, 2004, the request for hearing was withdrawn.

**The Corporation of the City of Kitchener
Pension Plan for Fire Department Employees,
Registration Number 239475, FST File Number
P0172-2001;**

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal ("NOP") dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475. The Superintendent's reasons for refusing to consent to the City's application, as set forth in the NOP, are summarized as follows:

- the Plan was subject to a trust from its inception, the City had not reserved to itself the power to revoke that trust and that

therefore the City had not demonstrated that the Plan properly provided for the payment to the employer of surplus on wind up as required under paragraph 79(3)(b) of the Act; and

- the City had not demonstrated that the requisite level of consents had been obtained to satisfy the requirements of paragraph 8(1)(b) of the Regulation.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned sine die.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003 at which time a hearing date was set.

The matter was originally heard on July 14, 2003 by a three-member panel of the Tribunal comprised of Ms Martha Milczynski, Mr. Louis Erlichman and Mr. Paul Litner, as Chair of the Panel. Subsequent to the date of that hearing, Ms Milczynski was appointed as a Prothonotary of the Federal Court of Canada. As a result, she was unable to participate in the decision. Mr. Colin McNair, a Vice Chair of the Tribunal, was designated as a member of the panel, in replacement of Ms Milczynski, after it became clear that the two remaining members of the panel could not agree on the disposition of the proceeding. The parties agreed to this process



and the matter was then re-heard before the reconstituted panel on May 14, 2004.

When the matter was first heard on July 14, 2003, the City and the Superintendent submitted they had subsequently agreed that the requisite level of Plan member and former member consents had been obtained to meet the requirements of the Act and the Regulation. The Tribunal granted a Consent Order acknowledging that the City had satisfied the requisite levels of consents under paragraph 8(1)(b) of the Regulation, a prerequisite for obtaining the Superintendent's consent under section 78 of the Act. Therefore, the remaining issue for the Tribunal to decide was whether or not the Plan provides for the payment of surplus to the City on its wind up.

In its majority reasons dated June 24, 2004, the Tribunal concluded that the Plan does not validly provide for payment of surplus to the City on the wind up of the Plan given that the Plan amendments providing for such payment were inconsistent with the trust in favour of Plan members that was found to exist in respect of the funding vehicles for the Plan. The Superintendent was therefore, directed to carry out the proposal, contained in the Notice of Proposal, to refuse to consent to the City's surplus withdrawal application. The Reasons for Decision dated June 24, 2004, are published in this bulletin on page 123.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case.

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise



Ontario

of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, were published in Volume 13, Issue 1 of the Pension Bulletin.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

On December 17, 2003, an application for party status was filed by the Board of Trustees, Electrical Industry of Ottawa Pension Plan. At a resumption of the pre-hearing conference on January 12, 2004, full party status was granted, and the hearing dates were changed. At the hearing on March 30, 2004, the panel reserved its decision.

Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5, 2002, proposing to make orders that the various Molson Canada pension plans be wound up in part.

The pre-hearing conference scheduled for October 28, 2002 was adjourned sine die on consent of the parties.

On July 22, 2004, Molson Canada withdrew the five Requests for Hearing.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan and to;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust (the "Second Proposal").

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees



Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

Evidence was heard on October 27-29, 2003 and on January 7-8, 2004 and oral argument took place on January 26, 2004. In its Reasons For Decision dated March 4, 2004, the Tribunal ordered the Superintendent to carry out the First Proposal contained in the Notice of Proposal with the modification that the amounts to be reimbursed (with foregone income thereon) should be specified as per the direction of the Tribunal. The Tribunal also ordered the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal. The Reasons For Decision dated March 4, 2004, were published in Volume 13, Issue 2 of the Pension Bulletin.

On March 30, 2004, the DCA Employees Committee filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).

On April 2, 2004, Kerry (Canada) Inc. made a request to the Tribunal for an order of costs against the DCA Employees Pension Committee. On April 28, 2004, the Tribunal issued a disposition with respect to the request for costs, declining to make the requested order for costs. The Disposition Of Request For Costs dated April 28, 2004, is published in this bulletin on page 121.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and



Ontario

- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, Kerry (Canada) Inc. filed an application for party status.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter.

On April 8, 2004, the Tribunal heard argument from the parties with respect to the DCA Employees Pension Committee's request that the Tribunal issue reasons for decision concerning the earlier motions for disclosure brought by the Committee. The Tribunal denied the request. The Tribunal also heard argument from the parties concerning the Applicant's reply submissions, in addition to a request that the argument phase of the hearing be adjourned to permit surreply submissions from the Respondents. The Respondent's argued that the Applicant's reply submissions raised new issues and arguments not previously addressed. The request for adjournment was granted to allow the Respondent's time to prepare, file and serve surreplies to the Applicant's reply. On June 8 and 9, 2004, the Tribunal heard oral arguments from the parties, and reserved its decision.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be



employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, John Hughes filed an application for party status.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the

Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors*



Ontario

Arrangement Act, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, FST File Number P0233-2004;

On January 21, 2004, Gardena Canada Ltd. (the "Employer"), requested a hearing regarding the Notice of Proposal dated December 19, 2003 of the Deputy Superintendent, Pensions, to refuse to consent to the application dated March 12, 2002, submitted by the Employer for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

On February 25, 2004, David Evans, a member of the Plan, filed an application for party status. On March 5, 2004, applications for party status were filed by Raymond Bamsey, Ernest Burke, Pat Dobson, Leone Douglas, Gloria Dunn, Karen Garvey, Doreen Harding, Connie Heron, James Peter and Patricia Sinden, who are active, deferred vested and retired members of the Plan ("The Ten Members").

On March 19, 2004, Kevin MacRae, a member of the Plan, filed an application for party status. On March 24, 2004, Liviana Macoretta, a member of the Plan, filed an application for party status, which was subsequently withdrawn on April 20, 2004.

At the pre-hearing conference on May 6, 2004, the Ten Members were granted full party status on consent of all parties. The applications for party status filed by Kevin MacRae and David

Evans were denied as no one was in attendance to speak to the respective applications.

At a settlement conference on July 29, 2004, the parties settled the matter.

Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit, and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference was held on May 25, 2004. On July 15, 2004, the Board of Trustees of the Electrical Industry of Ottawa Pension Trust Fund filed an application for party status. At a resumption of the pre-hearing conference on July 26, 2004, full party status was granted to the Board of Trustees.

At a settlement conference on August 5, 2004, the parties were unable to settle the matter. A pre-hearing conference is scheduled to resume on August 27, 2004, and the hearing date of September 27, 2004 was cancelled.



Ronald Ford, Bridgestone/Firestone Canada Inc., Pension Plan -1992, Registration Number 251348; FST File Number P0238-2004;

On March 11, 2004, Ronald Ford, a member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated February 18, 2004, to refuse to make an Order pursuant to section 87 of the Act requiring the payment of a disability benefit to the Applicant from the "Firestone Plan".

On March 25, 2004, Bridgestone/Firestone Canada Inc filed an application for party status. On April 6, 2004, an application for party status was filed by the CAW-Canada and its Local 1411.

The pre-hearing conference scheduled for June 22, 2004 did not proceed. On June 21, 2004, the parties requested the pre-hearing conference be adjourned sine die due to settlement discussions.

On August 5, 2004, the request for hearing was withdrawn.

Peter Stopyn, Douglas Llewellyn, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67, Registration Number 381525; FST File Number P0239-2004;

On May 13, 2004, Peter Stopyn and Douglas Llewellyn, former members of the Plan, a multi-employer plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice

of Proposal dated April 23, 2004, proposing to refuse to make an order:

- requiring the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67 (the "Board"), the administrator of the Plan, to refrain from suspending the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of their retirement benefits;
- requiring the Board to limit the suspension of the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of retirement benefits to situations where the returning former member works more than 200 hours in any calendar year and not where the returning former member is paid for more than 200 hours but does not work more than 200 hours; or
- requiring the Trustees to amend the Plan so that the Plan text reflects the requirements listed in paragraphs (a) or (b) above as the case may be.

On July 13, 2004, the Trustees of Local 67, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Pension Plans filed an application for party status.

A pre-hearing conference is being scheduled.



Constantin Munteanu, Portship Employees Negotiated Pension Plan, Registration Number 0393199; FST File Number P0240-2004;

On June 10, 2004, Constantin Munteanu a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated April 8, 2004, proposing to refuse to make an Order directing Pascol Engineering, formerly Port Arthur Shipbuilding Company, to make an additional payment from the fund for the Plan in respect of Mr. Munteanu's pension benefits or the commuted value of his pension benefits. The matter is pending.

Power Workers' Union, Kinectrics Inc. Pension Plan, Registration Number 1075787; FST File Number P0242-2002;

On July 15, 2004, the Power Workers' Union requested a hearing regarding a refusal, evidenced by a letter from the Pension Plan Branch of the Financial Services Commission dated May 28, 2004, to issue an Order under s.87 of the *Pension Benefits Act* requiring the administrator of the Pension Plan to take certain action and to refrain from taking other action in order to bring the Pension Plan into compliance with the Act. The Power Workers' Union had requested that the Superintendent issue a Notice of Proposal requiring Kinectrics Inc. to immediately cease taking a contribution holiday, to prepare and file an updated actuarial report, and to commence funding the Pension Plan pursuant to the updated actuarial report. The Pension Plan Branch took the position, in its May 28 letter, that the Pension Plan was

being funded in accordance with the latest filed actuarial report and that no new actuarial report was yet due as the filed report did not disclose a funding concern.

On July 23, 2004, Kinectrics Inc filed an application for party status.

A pre-hearing conference is being scheduled.

The following cases are adjourned *sine die*:

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
At a pre-hearing conference on July 6, 1999, the matter was adjourned sine die.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
Matter continues to be adjourned sine die pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), EST File Number P0071-1999;**
Matter adjourned sine die at a pre-hearing conference on February 21, 2000.



- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**
At the pre-hearing conference on June 27, 2000, the matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
Matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**
At the request of the parties, this matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**
The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;**
At a settlement conference on October 30, 2001, the parties agreed to adjourn the matter sine die pending discussions between the parties.
James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;
On July 10, 2002, the hearing dates were adjourned sine die on consent of the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**
At the pre-hearing conference on October 28, 2002, the matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**
On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date sine die, pending finalization of a settlement.
- **Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;**
On March 2, 2004, the Tribunal granted the parties' request to defer the disclosure date, and adjourn the March 8, 2004 pre-hearing conference return date, as the parties are engaged in settlement discussions.
- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003**
On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.
- **Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003**
On February 4, 2004, the parties agreed to adjourn the matter sine die pending finalization of the terms of a settlement.



Ontario

- **Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003**

On February 26, 2004, the matter was adjourned sine die pending the outcome of an application by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.

- **Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004**

On March 4, 2004, the Applicant requested agreement from the Superintendent to adjourn this matter sine die pending the outcome of the *Monsanto* case. On March 12, 2004, the Superintendent agreed to the adjournment.



Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
		No decisions to report

Decisions to be Published

- City of Kitchener
- Kerry (Canada) Inc. (re: Costs)





Ontario

Financial Services Tribunal Decisions With Reasons

INDEX NO.: FST File Number P0191-2002

PLAN: Pension Plan for Employees of Kerry (Canada) Inc.
(the "Plan")

DATE OF DECISION: April 28, 2004

PUBLISHED: Bulletin 13/3 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to order that Kerry (Canada) Inc. reimburse the pension fund of the Pension Plan for the Employees of Kerry (Canada) Inc. (the "Plan") for certain expenses paid from the Plan since January 1, 1985, together with income thereon, and to order that Kerry (Canada) Inc. amend certain expense provisions of the current Plan documents for consistency with the original Plan documents as specified in the proposed order;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act;

AMONG:

KERRY (CANADA) INC.

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

-and-

ELAINE NOLAN, GEORGE PHILLIPS,
ELISABETH RUCCIA,
KENNETH R. FULLER, PAUL CARTER, R.A.
VARNEY and BILL FITZ, being members
of the DCA EMPLOYEES PENSION
COMMITTEE representing certain of the
members and former members of the Pension
Plan for the employees of Kerry (Canada) Inc.
Respondents



DISPOSITION OF REQUEST FOR COSTS

The Applicant, Kerry (Canada) Inc., made a request to the Tribunal for an order of costs, in this proceeding, against the DCA Employees Pension Committee (the "Committee"), which request was supported by written submissions. The Committee did not file a response.

We have considered the submissions of the Applicant in light of Rule 48.01 of the Interim Rules of Practice and Procedure of the Tribunal, which sets out criteria for the award of costs to parties, and in light of the Tribunal's Practice Direction on Cost Awards, keeping in mind the general discretion of the Tribunal to award costs under section 24 of the Financial Services Commission of Ontario Act, 1997, as read with section 17.1 of the Statutory Powers Procedure Act.

We are not persuaded that the case has been made out for the requested order for costs in the circumstances of this proceeding. In assessing the Committee's conduct in the course of the proceeding - one of the main factors to which the Applicant has directed our attention - we have given some weight to the fact that the Committee was not represented by counsel and that its representative, a Committee member, was not familiar with all of the procedural niceties of participation in a proceeding of this kind. This is not to suggest that a party to a proceeding before the Tribunal will necessarily avoid the possibility of an order of costs against it simply by choosing not to retain legal counsel.

In all of the circumstances, we decline to make the requested order for costs.

DATED at Toronto, Ontario this 28th day of April 2004.

Colin H.H. McNairn,
Vice-Chair of Tribunal and of the Panel

Shiraz Y.M. Bharmal,
Member of the Tribunal and Chair of the Panel

David A. Short,
Member of the Tribunal and of the Panel

**INDEX NO.:**

FST File Number P0172-2001

PLAN:The Corporation of the City of Kitchener Pension Plan
for Fire Department Employees, Registration No. 239475
(the "Plan")**DATE OF DECISION:**

June 24, 2004

PUBLISHED:

Bulletin 13/3 and FSCO Website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*,
R.S.O. 1990, c. P.8, as amended by the Financial
Services Commission of Ontario Act, 1997, S.O.
1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the
Superintendent of Financial Services to refuse
to consent to the application pursuant to s. 78(1)
of the Act, submitted by the City of Kitchener
for payment of surplus to the Employer dated
July 17, 2000 in respect of The Corporation of
the City of Kitchener Pension Plan for Fire
Department Employees, Registration No.
239475 (the "Plan");

AND IN THE MATTER OF a Hearing in
accordance with subsection 89(8) of the Act.

BETWEEN:

**THE CORPORATION OF THE CITY OF
KITCHENER**

Applicant

- and -

**SUPERINTENDENT OF FINANCIAL
SERVICES**

Respondent

BEFORE:

Mr. Paul Litner

Member of the Tribunal and Chair of the
Panel

Mr. Louis Erlichman

Member of the Tribunal and of the Panel

Mr. Colin McNairn

Vice Chair of the Tribunal and Member of the Panel

APPEARANCES:

For The Corporation of the City of Kitchener

Ms Elizabeth M. Brown

Ms Stephanie J. Kalinowski



For the Superintendent of Financial Services
Mr. Mark Bailey

HEARING DATES:

July 14, 2003
May 14, 2004

REASONS FOR DECISION OF MR. LITNER

Background

Nature of the Proceedings

This hearing, held in accordance with subsection 89(8) of the Act, relates to an application by The Corporation of the City of Kitchener (the "City") to the Superintendent of Financial Services (the "Superintendent") for the Superintendent's consent to a payment of surplus to the City pursuant to subsection 78(1) of the Act.

The Plan was terminated effective August 1, 1998 and the City is the "employer" under the Plan for purposes of the Act. Accordingly, the City must demonstrate that it has satisfied all requirements of the Act that are preconditions to the distribution of surplus to an employer on plan wind up.

In order to obtain the Superintendent's consent to a payment of surplus to the "employer" on wind up of the Plan pursuant to subsection 78(1) of the Act, the City must satisfy the notice requirements of subsection 78(2) of the Act, as well as the requirements of subsection 79(3) of the Act. By virtue of paragraph 79(3)(d) of the Act, the City must demonstrate that it has complied with all other applicable requirements prescribed under Regulation 909, P.R.O. 1990,

as amended (the "Regulation"). In particular, the City must in this case demonstrate that it has met the member consent requirements of paragraph 8(1)(b) of the Regulation.

Only once the City demonstrates that these requirements of the Act and the Regulation have been met, can the Superintendent exercise his discretion to consent to a payment of surplus to an employer under subsection 78(1) of the Act.

Agreed Facts and Documents

The parties prepared and filed with the Tribunal an Agreed Statement of Facts and an Agreed Book of Documents, which I have considered and relied upon in coming to my decision. The Agreed Book of Documents contained copies of the relevant historical Plan documents, the wind up report for the Plan, the application to the Superintendent under section 78 of the PBA and other relevant documents.

I have set forth below the salient facts, which I have taken from the Agreed Statement of Facts. As well, I have referred below to extracts from the historical Plan documents which were taken from the Agreed Book of Documents.

Plan Wind Up

The Plan was wound up effective August 1, 1998 (the "Wind Up Date"). A wind up report dated September 16, 1998 was prepared by the City and its actuary and filed with the Superintendent (the "Wind Up Report"). The Superintendent approved the distribution of assets from the Plan in accordance with the Wind Up Report on April 27, 1999, in order



to provide for the payment of basic benefits to entitled persons as identified in the Wind Up Report. As at the Wind Up Date, the Plan actuary estimated the excess assets (surplus) to be \$2,688,000. The parties did not provide us with a more current estimate of the amount of surplus remaining on Plan wind up.

History of the Plan

The Plan was originally established by the City of Kitchener effective October 1, 1946, through By-law 2985 of the City of Kitchener dated September 3, 1946. The terms of the Plan (the "Original Plan Text") were attached as Schedule "B" to By-law 2985. The City also prepared a booklet dated September 1946, describing the terms of the Plan as originally constituted (the "Original Plan Booklet").

From the establishment of the Plan until 1978, the benefits promised under the Plan were funded through Policy No. Gr. PT. 10025, an annuity contract issued to the City by Standard Life Assurance Company of Canada ("Standard Life") effective January 1, 1947 (the "Policy"), which was attached as Schedule "A" to By-law 2985.

The Original Plan Text was amended from time to time. By Endorsement 7 dated July 9, 1959, the Policy was amended to create a "deposit fund" under the Policy (the "Deposit Fund"), to provide a mechanism for the payment of premiums required to purchase certain ancillary benefits offered under the Plan from time to time that were not insured under the Policy.

Effective January 1, 1966, all members of the Plan except firefighters elected to join the Ontario Municipal Employees Retirement System ("OMERS"). The Plan retained the obligations relating to the past service benefits of the (non-firefighter) members who joined OMERS. The remaining (firefighter) members continued to accrue benefits under the Plan and the Policy.

Effective January 1, 1978, the City amended the Plan to significantly improve benefits. Among the improvements, the Plan's benefit formula was upgraded to a final average earnings formula. These changes were embodied in an amended and restated Plan text (the "1978 Plan Text").

Also effective January 1, 1978, the Policy became paid-up (fully insured, such that no further premiums were due) and the City entered into Deposit Administration Contract Gr. P.W. 11788 D.A. with Standard Life (the "Deposit Contract"), to provide a funding mechanism for the benefits under the Plan accruing after January 1, 1978.

Effective July 1, 1989, the remaining (firefighter) members of the Plan joined OMERS and were granted benefits under OMERS for all pensionable service with the City, less benefits fully insured under the Policy. Thus, the "surplus" that remains on wind up of the Plan is comprised of the remaining funds held under the Deposit Contract that were previously used to purchase benefits under the Plan, but are no longer required for that purpose.



Nature of the Plan

The Plan is a defined benefit plan which initially contained a career average earnings benefit formula. As noted above, benefits under the Plan were improved to a final average earnings formula commencing January 1, 1978. Members paid, based on their salaries, a portion of the premiums needed to fund current service benefits under the Plan. The City paid the remaining cost of the premiums.

Surplus Sharing Application

The City offered to share more than two-thirds of the surplus as at the Wind Up Date with the members and former members of the Plan. The City's proposal was accepted by 200 of the 239 members and former members entitled to a payment from the Plan on the Wind Up Date (the "Wind Up Group"). Of the remaining persons in the Wind Up Group, only one individual formally objected to the surplus sharing proposal. All others did not respond. Based on the Agreement reached with the members of the Wind Up Group and paragraph 8(1)(b) of the Regulation, the City filed a surplus withdrawal application with the Superintendent on August 15, 2000. More than one year later on August 23, 2001, the Superintendent issued a Notice of Proposal to refuse to consent to the City's application (the "NOP").

Notice of Proposal

The Superintendent's reasons for refusing to consent to the City's application, as set forth in the NOP, can be summarized as follows:

(a) the Plan was subject to a trust from its inception, the City had not reserved to itself the power to revoke that trust and that therefore the City had not demonstrated that the Plan properly provided for the payment to the employer of surplus on wind up as required under paragraph 79(3)(b) of the Act; and

(b) the City had not demonstrated that the requisite level of consents had been obtained to satisfy the requirements of paragraph 8(1)(b) of the Regulation.

The City and the Superintendent subsequently agreed that the requisite level of Plan member and former member consents had been obtained to meet the requirements of the Act and the Regulation. At the hearing of this matter, this Tribunal granted a Consent Order acknowledging that the City had satisfied the requisite levels of consents under paragraph 8(1)(b) of the Regulation, a prerequisite for obtaining the Superintendent's consent under section 78 of the Act. A copy of the Consent Order is attached hereto as Appendix "A".

Thus, the remaining issue for this Tribunal to decide is whether or not the City has met the requirements of paragraph 79(3)(b) of the Act; namely, whether the Plan provides for the payment of surplus to the City on its wind up.

The Panel

This matter was originally heard on July 14, 2003 by a three-member panel of the Tribunal comprised of Ms Martha Milczynski, Mr. Louis Erlichman and Mr. Paul Litner, as Chair of the



Panel. Subsequent to the date of that hearing Ms Milczynski was appointed as a Prothonotary of the Federal Court of Canada. As a result, she was unable to participate in this decision. Mr. Colin McNairn, a Vice Chair of the Tribunal, was designated as a member of the panel, in replacement of Ms Milczynski, after it became clear that the two remaining members of the panel could not agree on the disposition of the proceeding. The matter was then re-heard before the reconstituted panel on May 14, 2004. The parties agreed to this process.

Analysis

Standard of Review in Applications Under Paragraph 79(3)(b) of the Act

Paragraph 79(3)(b) of the Act provides as follows:

79(3) Subject to section 89 (hearing and appeal), the Superintendent shall not consent to an application by an employer in respect of surplus in a pension plan that is being wound up in whole or in part unless,

...

(b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;

...

In other words, before an application for the payment of surplus on the wind up of a pension plan to an employer can be approved,

the Superintendent must be satisfied that the plan "provides for payment of surplus to the employer on wind up".

There has been a great deal of jurisprudence before this Tribunal and its predecessor the Pension Commission of Ontario ("PCO"), and in the courts as to the meaning of paragraph 79(3)(b) of the Act.

The Superintendent's counsel urged us to accept that paragraph 79(3)(b) of the Act establishes a "high threshold" for the employer in establishing its legal entitlement to surplus, relying on the decision of this Tribunal in *Samsonite Canada Inc. v. Superintendent of Financial Services*, (October 21, 2002), FST File Nos. P0166-2001 and P0175-2001 ("Samsonite").

In *Samsonite*, the Tribunal considered an application under paragraph 79(3)(b) of the Act in which the applicant employer argued that it had validly amended historical plan and trust provisions restricting the use of trust fund assets to the exclusive benefit of plan members. In considering the particular historical plan documents at issue in *Samsonite*, the Tribunal stated as follows:

The Company also made submissions that the 1980 amendments were consistent with the amending authority the Company reserved to itself in the original plan and trust documentation. Such pension plan and trust provisions must, however, be express, unambiguous and clear to satisfy the "high bar" enunciated in *Schmidt v. Air Products* ... In the case at hand, the Company did not satisfy the Tribunal that there was the clear and unambiguous language in either the



Hourly or the Salaried Plan documentation that would permit the Company to participate in any distribution of surplus assets on Plan termination or that would permit an amendment to the Plans to be made subsequently, to give effect to such distribution. The requirements of subsection 79(3)(b) of the PBA have not been met to the high standard required to establish employer entitlement to surplus.

The reference to *Schmidt*, of course, is a reference to the Supreme Court of Canada's decision in *Schmidt v. Air Products Canada Ltd.* (1994), 115 D.L.R. (4th) 631 ("*Schmidt*"). With respect to counsel's position on these issues, I do not interpret the Tribunal's words in the *Samsonite* decision as establishing a higher standard for establishing an employer's legal entitlement to surplus for purposes of the Act. Most certainly, the Supreme Court of Canada in *Schmidt* did not state that there is any higher standard of entitlement that must be demonstrated in a surplus withdrawal situation than in any other case. Rather, entitlement to surplus is a question to be determined on a case by case basis in accordance with the relevant plan documents.

I interpret the Tribunal in *Samsonite* as merely confirming that the employer has the onus of demonstrating that it is legally entitled to surplus according to the principles laid down by the Supreme Court of Canada in *Schmidt* and that the applicant had not demonstrated such entitlement to the satisfaction of the Tribunal in that case.

In fact, the position taken by the Superintendent illustrates the dangers inherent in relying on statements made by this Tribunal in a particular

decision as a rule to be followed in all subsequent cases, without taking into account the specific facts or documents at issue in each particular proceeding. The overarching principle laid down by the courts is that in assessing surplus entitlement, whether for purposes of paragraph 79(3)(b) of the Act or otherwise, each case must be decided based upon its own particular facts and the specific plan documents in question. This approach was most recently endorsed by the Ontario Court of Appeal in *Howitt v. Howden Group Canada Ltd.* (1999), 170 D.L.R. (4th) 423 (Ont. C.A.) ("*Howitt*"), where the court stated:

The legislation, however, provides little or no guidance on how to resolve the issue of entitlement to a pension surplus. As a result, pension commissions and courts have had to resolve the issue on a case by case basis by an analysis of the pension plan in question, the funding structures under the plan, and by the application of contract or trust principles. (at p. 425)

In considering applications under subsection 78(1) of the Act, the Tribunal should be guided by several factors. First and foremost are the requirements of the Act. Second, the Tribunal should be guided by decisions of Canadian courts which provide guidance as to the proper legal principles in determining surplus ownership. We must apply these principles to the particular circumstances of each case.

I understand the jurisprudence to interpret paragraph 79(3)(b) of the Act as requiring the applicant to demonstrate that it is legally entitled to surplus. In order to determine entitlement to surplus, it is not sufficient to look only at the



current plan documents. One must examine the plan documentation from its inception to the current date to determine whether the plan has been validly amended from time to time such that the current provisions (on which the applicant typically relies in such applications) are valid.

In my view the proper test to be employed by this Tribunal in determining surplus ownership is best summarized in the following passage from *Schmidt* (at p. 666):

In the absence of provincial legislation providing otherwise, the courts must determine competing claims to pension surplus by a careful analysis of the pension plan and the funding structures created under it. The first step is to determine whether the pension fund is impressed with a trust. This is a determination which must be made according to ordinary principles of trust law. A trust will exist whenever there has been an express or implied declaration of trust and an alienation of trust property to a trustee to be held for specified beneficiaries.

If the pension fund, or any part of it, is not subject to a trust, then any issues relating to outstanding pension benefits or to surplus entitlement must be resolved by applying the principles which pertain to the interpretation of contracts to the pension plan.

If, however, the fund is impressed with a trust, different considerations apply. The trust is not a trust for a purpose, but a classic trust. It is governed by equity, and, to the extent that applicable equitable principles conflict with plan provisions, equity must prevail. The

trust will in most cases extend to an ongoing or actual surplus as well as to that part of the pension fund needed to provide employee benefits. However, an employer may explicitly limit the operation of the trust so that it does not apply to surplus.

The employer, as a settlor of the trust, may reserve a power to revoke the trust. In order to be effective, that power must be clearly reserved at the time the trust is created. A power to revoke the trust or any part of it cannot be implied from a general unlimited power of amendment. Funds remaining in a pension trust following termination and payment of all defined benefits may be subject to a resulting trust. Before a resulting trust can arise, it must be clear that all of the objectives of the trust have been fully satisfied. Even when this is the case, the employer cannot claim the benefit of a resulting trust when the terms of the plan demonstrate an intention to part outright with all money contributed to the pension fund. In contributory plans, it is not only the employer's but also the employees' intentions which must be considered. Both are settlors of the trust. Both are entitled to benefit from a reversion of trust property.

I would adopt these principles for determining surplus ownership as the proper test to be employed in deciding applications under paragraph 79(3)(b) of the Act.

Analysis of Plan Documents

I turn now to an analysis of legal entitlement to surplus under the Plan based upon the application of the principles laid down by the

Supreme Court of Canada in *Schmidt* to the plan documents put before us. In so doing, I have also taken into account the purpose and intent of the surplus sharing provisions of the Act and the Regulation, as well as the particular facts of this case.

Current Plan Terms

As noted above, January 1, 1978 was a key date for change within the history of this Plan. Effective as of that date, the City amended the Plan to significantly improve benefits, including upgrading the Plan's benefit formula to a final average earnings formula. Also effective January 1, 1978, the Policy became fully paid up (fully insured, such that no further premiums were due) and the City entered into the Deposit Contract with Standard Life to provide a funding mechanism for Plan benefits that were not payable under the Policy.

The surplus in question in this application is held under and subject to the terms of the Deposit Contract. In the documents before us, there is no evidence that the Deposit Contract was a trust per se nor was there any evidence of an intention to create a trust at the time the Deposit Contract was entered into by the City and Standard Life.

Section 11.03 of the 1978 Plan Text states: "if the plan is discontinued the assets of the plan will be allocated to members of the plan to provide pensions and other benefits according to their entitlements under the terms of the plan. Such allocations will be made in accordance with any applicable provincial legislation". Section 11.04 of the 1978 Plan Text provides that "if there are

any assets remaining after the liabilities for all benefits accrued under the plan have been met, they shall be returned to the City, or shall be used as the City may direct."

All subsequent versions of the Plan contain nearly identical language to that in section 11.03 and 11.04 of the 1978 Plan Text. This is the language that existed at the time of the Plan wind up.

The Superintendent conceded that the provisions of the Plan set forth above, in effect from January 1, 1978 until the Wind Up Date, provide for payment of surplus to the employer within the meaning of subsection 79(3)(b) of the Act. Also, there were no provisions of the Deposit Contract which would compel a result at odds with the clear wording of the Plan granting the employer a right to surplus refund on Plan wind up. I agree.

Thus, the remaining question to be determined is whether the historical Plan documents contained any provisions which would have invalidated the provisions of the 1978 Plan Text, which provide the employer with a right to surplus on Plan wind up.

Prior Plan Documents

As indicated by the Supreme Court of Canada in *Schmidt*, in analyzing historical plan documents one must first determine whether to employ trust or contract principles. If the pension fund is not subject to a trust, then the validity of historical plan amendments is to be determined in accordance with the principles of contract law.



On the other hand, if the pension plan is funded pursuant to a trust, then trust law principles will apply to the determination of surplus ownership. Thus, the first matter that this Tribunal must determine in interpreting the historical Plan documents is whether a trust was in effect prior to January 1, 1978.

Trust or Contract?

The relevant provisions are contained in section 18 of the Original Plan Text, which provides:

The Employer will hold in trust for the benefit of members the group policy and all benefits payable thereunder subject to the provision that the Employer will be credited as a reduction in future premiums with any sum paid by the Assurance Company in excess of the benefits allowed to a withdrawing member. The Employer's liability shall be limited to the amounts paid by the Assurance Company corresponding to the member's benefits and options under the Plan.

The Original Plan Booklet contained similar language to the foregoing. In addition, the Policy provided that the specific benefits referred to in the conditions to the Policy were to be paid to "the Person Assured [the City] in trust, or its assigns."

These are the only references in the Original Plan Text, the Original Plan Booklet, or the Policy of an intention to create a trust. Section 22 of the Original Plan Text gave the City the power to amend, suspend or discontinue the Plan, but also provided that in the event of discontinuance, "no part of the benefits secured

by the group policy shall be retained by the Employer".

Counsel for the City advanced three key arguments as to why we should not interpret the Original Plan Text and the Policy to be subject to trust principles:

- (i) the Plan was funded pursuant to an insurance contract (i.e., the Policy) which was inconsistent with the creation of a trust;
- (ii) there was insufficient evidence under the Plan documents of an intention to establish or create a trust; and
- (iii) there was no trust fund.

The Superintendent's counsel submitted that the Plan is clearly subject to a trust and that the trust extends to all benefits or payments under the Plan, including any surplus payable under the Deposit Contract. I will address each of these arguments separately.

- (i) Insurance Contract Inconsistent with the Creation of the Trust Counsel for the Applicant urged us to accept that the fact that the Plan was funded pursuant to a group annuity contract meant that contract law principles had to be applied, and that the use of a contract was in and of itself inconsistent with the use of a trust, i.e., the two were mutually exclusive. Counsel for the Superintendent argued that this was a false dichotomy and that it was quite clear based on the case law that an annuity contract could be used and held in trust or subject to a trust.



I accept the position of the Superintendent on this issue. The *Howitt*, *LaHave* and *Bull Moose Tube* cases, noted below, make it clear that there is no inconsistency in funding a plan pursuant to a group annuity contract, while at the same time holding that contract in trust for the exclusive benefit of members.

(ii) Insufficient Evidence of Intention to Establish a Trust

Does the reference in the Original Plan Text to holding the Policy (and all benefits payable thereunder) "in trust" create an irrevocable trust in favour of plan members, in the absence of other language indicating that it is to be held to the exclusive benefit of the Plan members? The Superintendent argues that it does since there is an express declaration of trust and clear intention to create a trust in section 18 of the Original Plan Text.

The Superintendent relied upon the following cases: *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 5 C.C.P.B. 97 (N.S. C.A.) ("LaHave"); and *Bull Moose Tube Ltd. v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187 (Ont. Ct. (Gen. Div.)) ("Bull Moose Tube") in support of his position that the wording of section 18 of the Original Plan Text is sufficient evidence of an intention to create a trust.

In the *LaHave* case, the Nova Scotia Court of Appeal was called upon to interpret the following language of an insurance policy under which plan benefits were funded:

The employer shall hold this policy IN TRUST for the respective persons for whose benefit the pensions and other benefits are herein respectively expressed to be payable and the Employer shall not have any beneficial interest hereunder save only in respect of any sums which the Employer may become entitled pursuant to any express provision to that effect herein contained.

The Nova Scotia Court of Appeal concluded that the foregoing language was sufficient to make the plan in question subject to a trust. Similar language in an insurance contract was also held by the Ontario Court of Justice to make the plan subject to a trust in the *Bull Moose Tube* case. On the other hand, counsel for the City argued that the *LaHave* and *Bull Moose Tube* cases were distinguishable, and she urged us to accept that the language of the Original Plan Text more closely resembled the language of the pension plans considered in the following cases: *Howitt v. Howden Group Canada Ltd.*, (1999), 170 D.L.R. (4th) 423 (Ont. C.A.); *C.U.P.E. Local 185 v. Etobicoke (City)* (1998), 17 C.C.P.B. 278 (Ont. Div. Ct.) ("City of Etobicoke"); and *Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan* (5) (1997), 149 D.L.R. (4th) 200 (N.S. C.A.) ("Central Guaranty").

In the *Howitt* case, the Ontario Court of Appeal was asked to consider whether a deposit administration contract issued by Standard Life in connection with the plan constituted evidence of an intention to create a trust. The relevant wording of the policy in question was as follows:



9. Discontinuance

...

(b) This policy shall also be discontinued if the Person Assured shall, under the pension plans stated in the Schedule, purchase pensions for Employees from another Insurance Company, or deposit money with trustees for the payment of such pensions to Employees, without first obtaining the agreement of the Company to such an act; or if the Person Assured shall notify the Company of its desire to continue making further deposits hereunder. In any of such events, no further deposit shall be made into the Deposit Fund and the Company [Standard Life] will hold the Deposit Fund, in trust, either for the continued purchase of pensions for Employees in respect of whom deposits have been made or until the Person Assured requests the withdrawal of money from the Fund for transfer to another Insurance Company or to trustees. ... (at p. 435).

The Ontario Court of Appeal examined that language and held that it was not sufficient to constitute evidence of an intention to create a trust.

Prima facie, the City's arguments are persuasive. It is true that the courts in *Howitt*, *City of Etobicoke* and *Central Guaranty* all examined plans funded pursuant to insurance contracts and concluded that no trust existed. However, the wording of the insurance contracts in question in these cases did not contain the express declaration that the policy would be held in trust, as it did

in the *LaHave* and *Bull Moose Tube* cases, and as it does in the Original Plan Text.

In fact, in *Howitt* the Ontario Court of Appeal had the opportunity to consider the *LaHave* and *Bull Moose Tube* decisions, and stated as follows (at p. 427):

Here, the vehicle used to fund the pension plan was a contract and not a trust. Funding by way of a contract is not, however, necessarily inconsistent with the intention to create a pension trust: *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 7 CCEL (2d) 245, 121 D.L.R. (4th) 67 (N.S.C.A.) at 255; *Bull Moose Tube Ltd. v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187 (Ont. C.T. (Gen. Div.)). *LaHave*, *supra* is distinguishable on the basis that although the funding was by contract there was an express declaration by the employer that the policy itself would be held in trust for the benefit of the employees. *Bull Moose*, *supra*, is similarly distinguishable. As in *LaHave*, the pension policy expressly provided that the employer held the policy in trust for the members.

...

In both cases the intention of the parties as expressed in the policy was clearly that the monies administered under the policy were to be held in trust. No such similar wording exists here.



In my view, a closer examination reveals that the language of section 18 of the Original Plan Text more closely resembles the language of the policy in the *LaHave* case (which was held to constitute evidence of an intention to create a trust) than it does the language of the policies considered in the *Howitt*, *City of Etobicoke* and *Central Guaranty* cases.

Accordingly, I accept the position of the Superintendent and find that the terms of the Original Plan Text constituted evidence of an intention to create a trust.

(iii) There is No Trust Fund

Counsel for the City argued that, despite the wording of section 18 of the Original Plan Text, there was no alienation of trust property in favour of the beneficiaries and therefore there could be no trust since there was no subject matter of the trust. The Superintendent argued that the Policy itself and any funds held thereunder formed the subject matter of the trust.

I have no difficulty in finding that the Policy and all monies held thereunder required to pay the specific benefits accrued under the terms of the Plan were an asset which forms the subject matter of the trust and therefore constitutes the trust property.

What is the subject matter of the trust (does the trust property include the surplus)?

I have had the benefit of reading the majority reasons. While we are in agreement on all matters up to this point, on this particular question I must respectfully disagree with their conclusions.

The City argued that any trust created under the Original Plan Text extended only to the Policy and not to the surplus in question that arose under the (separate) Deposit Contract. The Superintendent argued that the trust created under the Original Plan extended to all benefits or payments under the Plan, including any surplus payable under the terms of the Deposit Contract. The majority rely on the court decisions in *Bull Moose Tube* and *LaHave* as support for the proposition that the reference in the Original Plan Text to holding the Policy in trust was in essence a reference to holding the funding vehicle for the Plan, as amended or supplemented from time to time, in trust. I cannot accept this conclusion for the following reasons: the wording of the Original Plan Text does not support such a broad interpretation of the subject matter of the trust; in my view this reasoning runs contrary to established principles of trust law and the Supreme Court of Canada's reasoning in the *Schmidt* decision; and the *Bull Moose Tube* and *LaHave* cases can be distinguished from the present case. I will next elaborate on each of the foregoing reasons for departing from the majority decision.



Ontario

In the *Schmidt* case, the Supreme Court of Canada stated as follows with respect to the subject matter of a pension trust:

If no trust is created, then the administration and distribution of the pension fund and any surplus will be governed solely by the terms of the plan. However, when a trust is created, the funds which form the corpus are subjected to the requirements of trust law. (at p. 654)

...

In creating a pension plan and accompanying trust, an employer may be able to define the subject matter of the trust so as to include only the amount necessary to cover the employee benefits owed. However, very specific wording will be necessary before an ongoing surplus will be excluded from the operation of the pension trust. (at. p. 656)

Thus the Supreme Court of Canada confirmed that it is possible to limit the scope of a pension trust, provided that there is specific wording to this effect. This would appear to be just such a case. It is noteworthy that the Original Plan Text did not state that the pension fund under the Plan (as it may be constituted from time to time) was subject to a trust. Nor did it refer to the funding structure under the Original Plan Text as a "trust fund". Instead, the express declaration of trust under the Original Plan Text related only to "the group policy and all benefits payable thereunder". The terms of the Original Plan Text and the Policy were clear that the "benefits payable" were only those specific

amounts of pension benefits accrued each year, and not any "surplus" or "excess assets".

As a result, I am of the view that the language of the Original Plan Text was clear in that the subject matter of the trust created under the Plan was the Policy (and any benefits payable thereunder) and not the replacement Deposit Contract in effect after 1978 or the surplus which arose under the Deposit Contract.

I also am unable to conclude that a reference to holding in trust one particular funding vehicle under a pension plan means that any and all subsequent and separate funding vehicles must also be subject to that trust because they are held under the same plan. This would only be the case if the plan were to provide that that pension fund held under the plan from time to time is held in trust, which is not the case here. The logical conclusion to the majority's reasoning is that once a plan is funded pursuant to a trust, the entire pension fund must always be a trust, and nothing short of terminating the plan could put an end to this. This runs contrary to well-established common law trust principles which allow a settlor to define (restrict the scope of) the trust property. It would also mean that an employer could not create two separate funds within a pension plan, each with differing beneficiaries and terms.

In the *Schmidt* case, the plan in question was the result of a merger of two prior pension plans and funds. One of the prior plans was impressed with a trust, and the other, an insurance contract, was not. I note that in those circumstances the Supreme Court of Canada did not conclude that a reference to the pension



fund being held in trust in one of the prior plans meant that all assets held in the pension fund of the merged plan were subject to that trust. Indeed, the court came to the exact opposite conclusion. In my view traditional trust law principles stand for the proposition that a trust fund cannot be revoked by the settlor except in limited circumstances but does not preclude the settlor of a trust from creating an entirely new and separate trust fund which is not subject to the terms of the original trust.

I also believe that the *LaHave* and *Bull Moose Tube* cases are distinguishable from the present case.

In the *LaHave* case, *prima facie* it appears as though the court implicitly concluded that a trust extended to a new funding vehicle (an investment contract), even though the reference in the original plan was to a predecessor group annuity policy. Upon closer examination, however, it appears that the issue of whether funds held under a separate replacement contract were subject to the trust was simply not argued. When examining the subject matter of the trust, the court in *LaHave* simply concluded that the policy (i.e. the original group annuity policy) and all monies paid pursuant to such policy, including surplus, formed the subject matter of the trust. The court did not state that the separate investment contract formed the subject matter of the trust. We are left to speculate whether the surplus in question in that case arose under the original group policy or the replacement investment contract, since the issue was not explicitly addressed by the court nor does it appear to have been argued before the court. Indeed, in the *LaHave* case it could

also be reasonably concluded that the original group annuity policy was never cancelled or replaced by the new investment contract, it was simply an amendment to the original funding structure. In *Bull Moose Tube*, a case which predates *Schmidt*, the court implicitly concluded that a replacement policy was subject to a trust even though the reference to the trust was in the original policy. Once again, however, the court did not explicitly address this issue. Indeed, it does not appear that the issue of whether the trust extended to the replacement policy was even argued before the court in that case. Instead, it appears that the original policy was cancelled and all assets thereunder were transferred to a new policy and the employer simply argued that the trust did not extend to surplus, it only applied to basic benefits. This is a very different situation than the case before us.

In neither of the foregoing cases was there a clear change in the funding vehicle combined with changes (improvements) to the benefits under the pension plan, as there was in 1978 under the Plan. When the Deposit Contract was created, the Plan benefits were improved to a "final average earnings" formula. This signalled a clear intention to create a new pension benefit structure, which included a new (non-trust) funding arrangement.

Finally, I note that both the *LaHave* and *Bull Moose Tube* cases involved "all or nothing" disputes between the employer and the employees over who owned surplus. They did not involve an amicable surplus sharing arrangement, as here, where all parties agreed to the sharing of surplus and the only issue was whether the plan



provides for that payment within the meaning of section 78 of the PBA. Nor did those courts have representations from retirees supporting a negotiated surplus sharing arrangement.

At the hearing, the Tribunal was presented with a Letter of Comment signed by several of the retirees under the Plan. The Letter of Comment verified that an agreement to share surplus was reached between the City and the members and former members in 1998 and that such agreement was overwhelmingly ratified by members.

Letter of Comment goes on to note:

Since that time three more years have elapsed with no settlement and no indication that one is close at hand. With each passing year, more and more retirees are dying without being able to enjoy some of the benefits of their hard work after having dedicated themselves to careers in Public Service.

We wish to encourage the Tribunal to gather the relevant facts, thoroughly review them and render a decision expeditiously. Time is of the essence!

In reaching my decision, I have taken into account the Letter of Comment and I acknowledge the general sense of exasperation felt by retirees in this Plan who have not benefited from surplus while this matter has remained unresolved for several years.

Accordingly, I find that the trust established by the Original Plan Text applied only to the Policy and the specific benefits accrued under

the Policy. The surplus in question in this case arises under the Deposit Contract, not the Policy. In fact, the Policy (and all benefits payable thereunder) was fully paid-up effective January 1, 1978 and the Deposit Fund was cancelled. Neither of the parties argued that there should be any "tracing" of trust assets from the Policy into the Deposit Contract. The surplus in question cannot, therefore, be part of the trust created under the Original Plan Text. In light of the foregoing, I am of the view that contract law principles should be applied to the determination of surplus entitlement under the historical Plan documents. Using these principles, I can see no prior Plan language which would have invalidated the provisions of the 1978 Plan Text. As a result, I have concluded that the Plan provides for payment of surplus to the employer within the meaning of paragraph 79(3)(b) of the Act.

Disposition

As a result, I have concluded that the Applicant has satisfied the requirements of section 78 of the Act, and I would direct the Superintendent not to carry out the proposed order in the Notice of Proposal dated August 23, 2001.

Dated at Toronto, Ontario this 24th day of June 2004.

Paul W. Litner
Member of the Tribunal and
Chair of the Panel



REASONS FOR DECISION OF MR. MCNAIRN AND MR. ERLICHMAN

We are in agreement with the Analysis in Mr. Litner's Reasons for Decision up to the heading "What is the subject matter of the trust (does the trust property include the surplus)?". It is at that point that we part company.

We adopt the statement of the Background in this matter set out in those Reasons and, for convenience, will use the capitalized terms therein as having the same defined meanings for the purposes of these Reasons.

Does the Trust Property Extend to the Deposit Contract?

In our view, the property that is impressed with a trust cannot be confined to the original Policy and its benefits even though section 18 of the Original Plan Text describes the subject of the trust as "the group policy and all benefits payable thereunder", an apparent reference to the policy then in place with the Standard Life Assurance Company, i.e. the original Policy that was subsequently supplemented, as a funding vehicle for the amended Plan, by the Deposit Contract. The decisions of the Ontario Court (General Division) in *Bull Moose Tube Limited v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187, and of the Nova Scotia Court of Appeal in *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 5 C.C.P.B. 97, support this conclusion.

In *Bull Moose Tube*, the intention to create a trust was evident from the terms of a group annuity policy that served not only as the funding

vehicle for a pension plan but as the plan text, setting out the terms of the pension plan arrangements funded by the policy. The policy stated that the employer shall hold "this policy IN TRUST for the respective persons for whose benefit the pensions and other benefits are herein expressed to be payable ...". However, the policy was later cancelled and replaced by a policy with a different insurer under which there was a surplus at the wind up of the plan. The employer sought a declaration from the court that it was entitled to that surplus. The court refused the declaration, a result that carries the implicit conclusion that the new policy was subject to the trust even though the relevant trust language was referable to the original policy. Although it is not clear from the reasons for decision whether the new policy contained trust language similar to that of the original policy, the court refers only to the trust created by the original policy. It then finds that a series of amendments to both policies purporting to give the employer entitlement to surplus were without effect having regard to that trust.

In *LaHave*, the trust language was the same as that in *Bull Moose Tube*. It was also contained in a group annuity policy that served the same dual roles (i.e. the funding vehicle and the source of the plan text) as the policy in *Bull Moose Tube*. By the time entitlement to surplus became an issue, the original policy had been replaced as the funding vehicle for the plan by an "investment contract", which we take to be a deposit administration agreement similar in nature to the Deposit Contract in the present case. Although the investment contract purported to replace the original policy, it did not set out the complete plan text.



Ontario

The Nova Scotia Court of Appeal came to the same result in *LaHave* as the Ontario court had reached in *Bull Moose Tube* – a refusal of the employer's application for a declaration of entitlement to plan surplus. Once again, there is an implicit conclusion that the original trust extended to the new funding vehicle - in *LaHave* an investment contract - even though the trust language in the original group annuity policy was referable to the latter policy. The court declined to give effect to a provision in the investment contract permitting the payment of surplus to the employer, apparently on the basis that the trust for the benefit of plan members in the original policy, which was found to extend to surplus, persisted in respect of the investment contract and, effectively, trumped the provision of that contract permitting payment of surplus to the employer.

The City relied on another, more recent decision of the Nova Scotia Court of Appeal, namely *Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan* (5) (1997), 149 D.L.R. (4th) 200. In that case, the court also had to determine whether there was a trust for plan members in respect of the surplus under a pension plan. In doing so, the court said that the proper starting point was to look at the "entirely new plan", funded by a deposit administration contract, under which a surplus had apparently been generated, that had replaced an earlier group annuity policy which set out the terms of the original plan (see at p. 248 and also at pp. 221, 247, 250 and 256-257). The "new plan" provided that on termination surplus would be paid to the employer, which was inconsistent with a trust in respect of the surplus for the benefit of plan members. The present case is distinguishable

in that the Plan we have to consider continued, in amended form, through the addition of the Deposit Contract, as a funding vehicle for the Plan, and was not replaced.

The court in *Central Guaranty* also considered at length the question of whether there was a trust in respect of the original group annuity policy or, as the court put it, in respect of the monies paid by way of premium to the insurer under that policy, concluding that there was no such trust. In the present case, we have found that there was sufficient evidence of an intention to create a trust in respect of the original Policy (see Mr. Litner's Reasons for Decision under the heading "Trust or Contract?").

We conclude, on the basis of the relevant judicial authorities, that the property that is subject to the trust established by section 18 of the Original Plan Text is the original Policy, as amended from time to time, and any policy benefits payable thereunder, as well as any other property that is substituted for or supplements the Policy as a source of funding for the Plan from time to time, such as the Deposit Contract.

If one were to take a narrower view of the extent of trust property than we have taken, would a trust in respect of an insurance policy then be inapplicable to:

- (a) the policy if it was amended by endorsement and, therefore, ceased to correspond precisely with the policy that was the subject of the original trust declaration?



- (b) a deposit administration feature established, as an addition to a group annuity feature, by way of endorsement to the policy that was the subject of the original trust declaration?

If the answer to (a) is "yes" (i.e. the trust is inapplicable to the amended policy), this would make for easy avoidance by an employer of an otherwise irrevocable trust in respect of an insurance policy, held for the benefit of members of a pension plan, by requesting that the insurer issue an endorsement to the policy. We think that it cannot logically be the case that any endorsement would automatically take the policy out of the trust. The answer to (a) must, therefore, be "no" (i.e. the trust is applicable to the amended policy). If so, it would be difficult to justify a different answer to (b), just because of the nature of the endorsement. If the answer to (b) is, therefore, "no" (i.e. the trust is applicable to the deposit administration feature established by endorsement to the policy), once again it would be difficult to justify a different answer if the deposit administration arrangement were to be effected through the vehicle of a new policy, as in the present case. Logic, therefore, leads us to the same position that we have reached in the previous paragraph on an analysis of the decisions in *Bull Moose Tube* and *LaHave*, i.e. that a declaration of trust in respect of an insurance policy funding a pension plan extends to property substituting for or supplementing that policy from time to time.

Does the Trust Property Extend to Surplus?

In *Schmidt v. Air Products Canada Ltd.* (1994), 115 D.L.R. (4th) 631, the Supreme Court of Canada observed that in creating a pension plan and accompanying trust, "an employer may be able to define the subject-matter of the trust so as to include only the amount necessary to cover the employee benefits owed", but that "very specific wording will be necessary before an ongoing surplus will be excluded from the operation of the pension trust" (at p. 656). There is no such specific wording in the Plan documents in the present case. Indeed, the fact that the pension trust relates to an insurance policy, rather than an investment fund, means, logically, that the trust extends to the full value of the policy, without distinction between the portion of that value required to satisfy pension benefits and the portion that is surplus to that requirement. This position is reinforced by the fact that the trust is also expressed to cover all benefits payable under the policy. Therefore, it is a matter of indifference whether those policy benefits should prove to be more than sufficient to satisfy the pension obligations under the Plan; they are all to be held in trust for the members of the Plan. In *LaHave*, the Nova Scotia Court of Appeal likewise concluded, on similar facts, that the trust extended to surplus, although this was based on its view that the unqualified statement that the policy is held in trust meant that all of the monies paid by way of premiums pursuant to the policy form the subject matter of the trust (at p. 108). As noted above, we subscribe to a different view as to the subject matter of the trust in the present case. The City maintained that the trust should not be taken to extend to surplus because the



nature of the initial Policy was such that no policy benefits in excess of what was required to fund pension obligations could be generated under the Policy. Assuming that to be true, the Original Plan Text could be amended and the Policy supplemented with an additional funding vehicle in such a way that surplus could be generated, which is what in fact happened in the present case. Consequently, there is no sufficient reason for limiting the trust to the amount necessary to cover pension obligations to Plan members.

Once it is found that there is an intention to create a pension trust, such as we have found in the present case, there is no need to establish an intention to extend that trust so as to cover surplus before the trust will have that reach. Such an onus would be inconsistent with the statement of the Supreme Court of Canada in *Schmidt*, noted above.

Who are the Beneficiaries of the Trust?

It is clear that the beneficiaries of the trust established by the Plan are the members of the Plan as this is expressly stated in section 18 of the Original Plan Text. Although the trust is subject to the qualification that the employer "will be credited as a reduction in future premiums with any sum paid [by the insurer] in excess of the benefits allowed to a withdrawing member", this is akin to a contribution holiday in respect of a pension fund that is subject to a trust. As is evident from *Schmidt*, the availability of such a contribution holiday is not inconsistent with Plan members' entitlement to surplus (at p. 665).

Was the Trust Effectively Revoked?

The 1978 Plan Text provided, for the first time, that any surplus assets, remaining after the liabilities for all benefits accrued under the Plan are met, shall be returned to the City or used as it may direct. This amended Plan Text will only be effective in the face of the trust language of the Original Plan Text if the City expressly reserved a power of revocation of the trust at the time the trust was created (see *Schmidt*, at p. 657). There was no such reservation in the Original Plan Text. However, the City argued that as it had the power to adopt the Plan by by-law (which it did), this carried with it the power to revoke the by-law, and therefore the trust established by the Plan, by virtue of subsection 28(g) of the Interpretation Act, R.S.O. 1990, c. I-11. The decision of the Ontario Court of Appeal in *Markle v. Toronto (City)* (2003), 63 O.R. (3d) 321 (application for leave to appeal to the Supreme Court of Canada dismissed on November 6, 2003), provides a complete answer to this argument. The court said, in the course of its decision, that this provision of the Interpretation Act "confirms a power to revoke a by-law, but does not authorize the revocation of a trust created by a by-law" (at p. 331). The provision of the 1978 Plan Text for the payment of any surplus to the City is, therefore, without effect as it is not authorized by an appropriate power to revoke the trust in respect of that surplus.

Disposition

Since we have concluded that the Plan does not effectively provide for payment of surplus to the City on the wind up of the Plan, in the



sense of paragraph 79(3)(b) of the Act, we direct the Superintendent to carry out the proposal contained in the NOP, that is to refuse to consent to the City's surplus withdrawal application, dated August 15, 2000, in respect of the Plan.

DATED at Toronto, Ontario this 24th day of June, 2004.

Colin McNairn,
Vice Chair of the Tribunal and Member of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

**APPENDIX "A"****FST File #POI72-2001****FINANCIAL SERVICES TRIBUNAL**

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to s. 78(1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17,2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

THE CORPORATION OF THE CITY OF KITCHENER

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

ORDER

WHEREAS the Respondent has agreed by letter dated May 9,2002 that the Applicant has satisfied the requisite level of consent required under section 8 of Regulation 909;

ON READING the Consents of the parties by their counsel, filed and on hearing the submissions of counsel for the Applicant and the Respondent:

THIS TRIBUNAL ORDERS that the Applicant has demonstrated that it has obtained the requisite level of consent required under section 8 of Regulation 909.

DATED at Toronto, this 14th day of July 2003.

Paul Litner,
Member of the Tribunal and Chair of the Panel

Martha Milczynski,
Chair of the Tribunal and Member of the Panel

Louis Erlichman,
Member of the Tribunal and Panel





FST File #PO172-2001

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c.P.8*, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28* (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to s. 78 (1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17, 2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No.239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
THE CORPORATION OF THE CITY OF KITCHENER
Applicant
 -and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

CONSENT

I consent to the order in the form and content as attached hereto as Appendix "A".

Date: July 11, 2003

Counsel for the City of Kitchener

FST File #PO172-2001

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c.P .8*, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997) c.28* (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to 5.78 (1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17,2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No.239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
THE CORPORATION OF THE CITY OF KITCHENER
Applicant
 -and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

CONSENT

I consent to the order in the form and content as attached hereto as Appendix "A".

Date: July 10, 2003

Counsel for the Superintendent of Financial Services

3683



The Editor, *Pension Bulletin*
Financial Services Commission of Ontario,
5160 Yonge Street, 17th Floor
Box 85
North York, Ontario
M2N 6L9

PLACE
STAMP
HERE



Please complete and return this form if you no longer wish to receive the Pension Bulletin or if your address label is incorrect, or if you wish to receive the Pension Bulletin in French:

I do not wish to continue to receive the Pension Bulletin

My label is incorrect. Please revise as follows:

Name: _____

Title: _____

Organization: _____

Address: _____

City: _____

Country: _____

Province: _____

Postal: _____

Please send _____ copies of the Pension Bulletin in French

Thank you for your assistance with the Mailing List Review



3 1761 114687965